

LIBRARY
SUPREME COURT, U.S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1952

No. 66

MARCEL MAX LUTWAK, MUNIO KNOLL AND
REGINA TREFTLER, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 16, 1952

CERTIORARI GRANTED OCTOBER 13, 1952

IN THE
Supreme Court of the United States

OCTOBER TERM, 1951.

No.

MARCEL MAX LUTWAK, MUNIO KNOLL, AND
REGINA TREITLER,

Petitioners;

vs.

THE UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT.

INDEX.

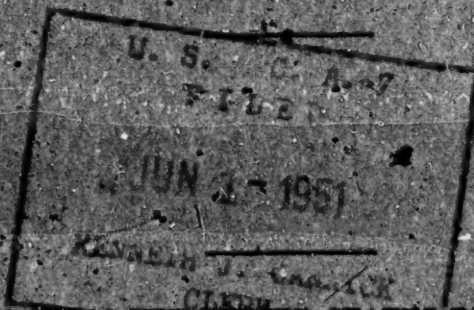
Index to printed transcript of record of proceedings in the United States District Court	i
Clerk's Certificate	387
Index to proceedings in U. S. Court of Appeals:	
Placita	389
Order taking cause under advisement, entered December 5, 1951	390
Opinion by Lindley, C. J., filed January 3, 1952	391
Judgment Affirming as to Marcel Max Lutwak, entered January 3, 1952	401
Judgment Affirming as to Munio Knoll, entered January 3, 1952	402
Judgment Affirming as to Regina Treitler, en- tered January 3, 1952	403
Reference to filing Petition for Rehearing	403
Reference to filing Answer to Petition for Re- hearing	403
Opinion of the Court Concerning the Petition for Rehearing, filed April 16, 1952	404
Order denying Petition for Rehearing, entered April 16, 1952	415
Reference to Issuance of Mandates, April 22, 1952	415
Order Recalling and Staying Mandates, entered April 23, 1952	416
Designation of Record, filed April 29, 1952	417
Clerk's Certificate	421
Order allowing certiorari	422

In the
United States Court of Appeals
For the Seventh Circuit

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
No. 10,326 *vs.*
MARCEL MAX LUTWAK,
Defendant-Appellant.

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
No. 10,327 *vs.*
MUNIO KNOLL,
Defendant-Appellant.

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
No. 10,328 *vs.*
REGINA TREITLER,
Defendant-Appellant.



APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION.

The Scheffer Press, Inc.—ANDOVER 3-6850

TRANSCRIPT OF RECORD FILED MARCH 2, 1951
PRINTED RECORD

In the
United States Court of Appeals
For the Seventh Circuit

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
No. 10,326 vs.
MARCEL MAX LUTWAK,
Defendant-Appellant.

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
No. 10,327 vs.
MUNIO KNOLL,
Defendant-Appellant.

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
No. 10,328 vs.
REGINA TREITLER,
Defendant-Appellant.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION.

INDEX.

	PAGE
Placita	1
Statement under Rule 10(b) of U.S.C.A.	2
Indictment	4, 14
Motion to Dismiss, of Defendant Regina Treitler	15
Motion to Dismiss, of Defendants Leopold Knoll and Grace Klemtner Knoll	16
Order—	
October 19, 1950 that leave be granted defendants to adopt motion of Defendant Regina Treitler to dismiss certain counts	17
That Cause be set for Trial January 8, 1951	18
November 27, 1950 that motion of Defendant Grace Klemtner Knoll to dismiss Count One is granted	18
Motions of other defendants to dismiss Counts One and Six are denied	19
January 16, 1951 certain counts dismissed for want of proper venue	19
That jury be permitted to separate	19, 20
Transcript of Proceedings	21
Opening Statement on Behalf of the Government	22

WITNESSES.

On Behalf of the Government:

Anne Zapler—

Direct Examination by Mr. Downing	28
Cross Examination by Mr. Sokol	36
Redirect Examination by Mr. Downing	36
Recross Examination by Mr. Sokol	38
Cross Examination by Mr. Gerber	39

Maria Lutwak—

Direct Examination by Mr. Downing 40

Resumed—

Direct Examination (Continued) by Mr.
Downing 58

Cross Examination by Mr. Gerber 70

Cross Examination by Mr. Eben 78

Cross Examination by Mr. Bartoline 78

Resumed—

Cross Examination (Continued) by Mr. Bart-
oline 82

Cross Examination by Mr. Eben 88

Redirect Examination by Mr. Downing 90

Recross Examination by Mr. Bartoline 91

Joseph Ludmer—

Direct Examination by Mr. Downing 92

Cross Examination by Mr. Eben 110

Cross Examination by Mr. Bartoline 116

Cross Examination by Mr. Gerber 118

Redirect Examination by Mr. Downing 129

Jane Turner—

Direct Examination by Mr. Downing 131

Cross Examination by Mr. Eben 137

Nettie Wicker—

Direct Examination by Mr. Downing 138

Cross Examination by Mr. Bartoline 144

Redirect Examination by Mr. Downing 144

George Grothe—

Direct Examination by Mr. Downing 145

Morris Haberman—

Direct Examination by Mr. Downing 150

Resumed—

Direct Examination (Continued) by Mr.
Downing 172

Bess Osborne—

Direct Examination by Mr. Downing 190

Cross Examination by Mr. Gerber 210

Cross Examination by Mr. Eben	216
Cross Examination by Mr. Sokol	219
Redirect Examination by Mr. Downing	220
Recross Examination by Mr. Gerber	222
Recross Examination by Mr. Eben	222

Ben Tunick—

Direct Examination by Mr. Downing	269
Cross Examination by Mr. Eben	272
Redirect Examination by Mr. Downing	273
Recross Examination by Mr. Eben	273

COURT'S WITNESS.

Mrs. Leopold Knoll—

Examination by Court	226
Cross Examination by Mr. Downing	226

Resumed—

Cross Examination (Continued) by Mr. Downing	240
Cross Examination by Mr. Eben	258
Recross Examination by Mr. Downing	265
Recross Examination by Mr. Eben	267

Argument re Competency of Witness	41
---	----

Address by Mr. Eben	53
---------------------------	----

Colloquy	55, 80, 100, 124, 126, 148, 156, 164, 171, 184, 186, 223, 274, 287, 345, 348
----------------	--

Argument re Admission of Exhibits	181
---	-----

Argument re Testimony of Bess Osborne	187
---	-----

Government's Exhibits Offered in Evidence	267
---	-----

Argument re Instructions	277
--------------------------------	-----

Government's Exhibits Received in Evidence	279
--	-----

Argument re Admission of Testimony	283
--	-----

Motions for Acquittal	289
-----------------------------	-----

Argument re Motions to Dismiss Certain Counts	291
--	-----

Court's Instructions Submitted to Counsel	293
Objections to Certain Instructions	299
Discussion re Counts	301
Discussion re Instructions	305
Proceedings Resumed After Recess	327
Court's Charge to the Jury	329
Verdicts of Jury	349
Discussion re Bonds	351
Certificate of Official Court Reporter	353
Instructions Submitted and Given	354
Verdict as to Munio Knoll	358
As to Marcel Max Lutwak	359
As to Regina Treitler	360
As to Leopold Knoll	361

Orders—

January 18, 1951 that alternate jurors be dismissed	362
That defendant Leopold Knoll go hence without day discharged from further prosecution under Indictment filed against him	362
That bonds of defendants Munio Knoll, and Marcel Max Lutwak be increased to the sum of Five Thousand Dollars each	362
That bond of defendant, Regina Treitler remain in full force and effect	362
Motion for New Trial	363
Motion in Arrest of Judgment	365

Orders—

January 22, 1951, that motions of defendants for judgment of acquittal notwithstanding the verdict are overruled and denied	366
---	-----

That sentence and judgment of Court upon verdicts rendered that each of defendants be committed to custody of Attorney General of the United States for period of Two Years and forfeit and pay fine of Ten Thousand Dollars each together with costs	367
Notice of Appeal of Munio Knoll	367
Of Marcel M. Lutwak	369
Of Regina Treitler	370
Certificate of Mailing	372
Statement of Points	373
Appellants' Designation of Record	376
Order—	
February 15, 1951 that exhibits introduced by Government be transmitted to clerk of Court of Appeals in original form	379
Appellee's Supplemental Designation of Record	380
Order—	
February 23, 1951 re Designation of Record and Supplemental Designation of Record	381
Clerk's Certificate	382
Notice under Rule 14 re Printing of Record	383
Plaintiff-Appellee's Supplemental Designation of Record	386
Order allowing certiorari	422

UNITED STATES OF AMERICA,
Appellee,
and Cross-Appellant
vs.

MUNIO KNOLL, alias Zygmunt Ro-
mankiewicz, MARCEL MAX LUT-
WAK, REGINA TREITLER,
Appellants,
and Cross-Appellees.
and

LEOPOLD KNOLL,
Cross-Appellee.

No. 50 CR 464

1 Pleas had at a regular term of the United States District Court for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of January (it being the 1st day thereof) in the Year of Our Lord One Thousand Nine Hundred Fifty-One and of the Independence of the United States of America; the 175th Year

Present:

Honorable John P. Barnes, District Judge.
Honorable Philip L. Sullivan, District Judge
Honorable Michael L. Igoe, District Judge
Honorable William J. Campbell, District Judge
Honorable Walter J. La Buy, District Judge
Honorable William H. Holly, District Judge

Roy H. Johnson, Clerk

Thomas P. O'Donovan, Esquire, Marshal

Tuesday, January 16, 1951

Court met pursuant to adjournment

Present: Honorable John P. Barnes, Trial Judge

Monday, January 22, 1951

Court met pursuant to adjournment

Present: Honorable John P. Barnes, Trial Judge

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

* * Caption—No. 50 CR 464 * *

STATEMENT UNDER RULE 10(b) OF THE RULES
OF THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

1. This proceeding was commenced by the return of Indictment No. 50 CR 464 by the July 1950 Grand Jury on August 7, 1950.

2. The indictment named Munio Knoll, alias Zygmunt Romankiewicz, Marcel Max Lutwak, Regina Treitler, Leopold Knoll, and Grace Klemtner Knoll as defendants. By order of court entered on November 27, 1950, defendant Grace Klemtner Knoll was dismissed from the indictment.

3. The defendants filed motions to dismiss Count I and Count VI of the indictment on October 9, 1950. Each of the defendants also entered his plea of not guilty on October 9, 1950.

4. Following the indictment and pending trial, each of the defendants was allowed to remain at liberty on a bond of \$1,000.00.

5. The trial commenced on January 8, 1951, before the Honorable John P. Barnes, Judge of the United States District Court, and continued thereafter on January 9, 10, 11, 12, 15, 16, 17, and 18.

6. At the close of the government's case the defendants moved for acquittal under Counts II, III, IV, V and VI, on the ground, among others, that the government had failed to prove proper venue. On January 16, 1951, the court entered an order dismissing Counts II, III, IV, V, and VI for want of proper venue.

3 7. The jury returned four verdicts on January 18, 1951, finding defendants Munio Knoll, alias Zygmunt Romankiewicz, Marcel Max Lutwak and Regina Treitler guilty as charged in Count I of the indictment, and finding defendant Leopold Knoll not guilty as charged in Count I of the indictment.

8. On January 23, 1951, the court denied the defendants motions for acquittal notwithstanding the verdict,

for a new trial, and in arrest of judgment, and sentenced each of the defendants Munio Knoll, alias Zygmunt Romankiewicz, Marcel Max Lutwak and Regina Treitler to two years imprisonment and a fine of \$10,000.00.

9. Each of the defendants Munio Knoll, alias Zygmunt Romankiewicz, Marcel Max Lutwak and Regina Treitler filed a notice of appeal on January 22, 1951.

10. On January 22, 1951, the trial court refused to grant bail to any of the defendants pending appeal. On emergency petition of each defendant to the United States Court of Appeals for the Seventh Circuit, bail was set for the defendants pending appeal as follows: Munio Knoll, alias Zygmunt Romankiewicz, \$7500.00; Marcel Max Lutwak, \$7500.00; and Regina Treitler, \$2500.00.

A. Bradley Eben,
Richard F. Watt
Bernard Weissbourd
Attorneys for Defendants-
Appellants

A. Bradley Eben
208 South La Salle Street
Chicago 4
Central 6-1763

Richard F. Watt
Board of Trade Building
Chicago 4
Harrison 7-2195

Bernard Weissbourd
135 South La Salle Street
Chicago 3
Financial 6-3535

4
IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

* * Caption—No. 50 CR 464 * *

Be It Remembered, that on to-wit, the 7th day of August, 1950 the above-entitled action was commenced by the filing of the following Indictment, in the office of the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, in words and figures following, to-wit:

5

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

* * Caption—No. 50 CR 464 * *

COUNT ONE

The July 1950 Grand Jury charges that

Munio Knoll,
alias Zygmunt Romankiewicz,
Marcel Max Lutwak,
Regina Treitler,
Leopold Knoll and
Grace Klemtner,
alias Grace Klemtner Knoll,

hereinafter referred to as the defendants, on or about July 1, 1947, and continuously thereafter up to and including the date of this indictment, in the Northern District of Illinois, Eastern Division, and at divers other places both within and without the jurisdiction of this court, did unlawfully, willfully and knowingly conspire, combine, confederate and agree together, and with each other, to commit offenses against the United States, that is to say, the offenses set forth and described in Counts Two to Six inclusive, of this indictment, which said descriptions of said offenses are incorporated herein by reference and made a part hereof as though fully set forth, and to defraud the United States of and concerning its governmental function and right of administering the immigration laws of the United States, of and concerning its governmental function and right of administering the

Immigration and Naturalization Service of the United States Department of Justice, and of and concerning its governmental function and right to have the business and affairs of the said Immigration and Naturalization Service, in the consideration, administration, investigation and disposition of matters affecting and affected by the Immigration and Naturalization Service, conducted in its behalf honestly and free from fraud, deceit, misrepresentation, concealment of a material fact, interference and obstruction.

The grand jury further charges that the said conspiracy, combination, confederation and agreement was in manner and substance as follows, to wit:

In the summer of 1947 Maria Knoll, alias Maria Irena Lutwak, and the defendants, Munio Knoll, alias Zygmunt Romankiewicz, and Leopold Knoll, were then and there aliens and not citizens of the United States and resided in Paris, France, as the defendants herein then and there well knew.

At the time of the formation of the said conspiracy and at all times subsequent thereto one Bessie Benjamin Osborne and the defendants, Grace Klemtner, alias Grace Klemtner Knoll, and Marcel Max Lutwak, were unmarried citizens of the United States who had served in the Armed Forces of the United States during the Second World War and who had theretofore been honorably discharged from such service, as the defendants herein then and there well knew.

It was further a part of the said conspiracy that the defendant, Marcel Max Lutwak, would in the summer of 1947 journey from the United States to Paris, France, and there go through the form of a marriage ceremony with Maria Knoll, alias Maria Irena Lutwak, and that thereafter in the year of 1947 the said Maria Knoll, alias Maria Irena Lutwak, would journey to the United States and would be permitted to enter the United States for permanent residence as a non-quota immigrant by the United States immigration authorities at the Port of New York upon the representation that she was the alien spouse of a United States citizen having an honorable discharge from the Armed Forces of the United States during the Second World War under the provisions of Section 232, Title 8, United States Code.

7

It was further a part of the said conspiracy that the said Bessie Benjamin Osborne would during the year 1947 journey from the United States to Paris, France, and there go through the form of a marriage ceremony with the defendant, Munio Knoll, alias Zygmunt Romankiewicz, and that thereafter in the year 1947 the defendant Munio Knoll, alias Zygmunt Romankiewicz, would journey to the United States and would be permitted to enter the United States for permanent residence as a non-quota immigrant by the United States immigration authorities at the Port of New York upon the representation that he was the alien spouse of a United States citizen having an honorable discharge from the Armed Forces of the United States during the Second World War under the provisions of Section 232, Title 8, United States Code.

It was further a part of the said conspiracy that the defendant, Grace Klemtner, alias Grace Klemtner Knoll, would during the year 1947 journey from the United States to Paris, France, and there go through the form of a marriage ceremony with the defendant Leopold Knoll, and that thereafter in the year 1947 the defendant, Leopold Knoll, would journey to the United States and would be permitted to enter the United States for permanent residence as a non-quota immigrant by the United States immigration authorities at the Port of New York upon the representation that he was the alien spouse of a United States citizen having an honorable discharge from the Armed Forces of the United States during the Second World War under the provisions of Section 232, Title 8, United States Code.

It was further a part of the said conspiracy that the said marriages would be marriages in form only and would be entered into by the parties thereto solely for the purpose of representing them as marriages to the United States Immigration and Naturalization Service, and that the said defendants would agree that after the aforesaid ostensible marriages had been performed in Paris, France, and after the aforesaid ostensible marriages

8

had served their purpose to secure the entry of the said Maria Knoll, alias Maria Irena Lutwak, and the defendants, Munio Knoll, alias Zygmunt Romankiewicz, and Leopold Knoll, into the United States for permanent

residence as non-quota immigrants under Section 232, Title 8, United States Code, the parties to the aforesaid ostensible marriages would not live together in the United States as man and wife and thereafter would take such legal steps to sever the formal bonds of said ostensible marriages as they saw fit.

It was further a part of said conspiracy that the said defendants would at all times subsequent to the formation of the said conspiracy conceal such transactions and acts aforesaid and would do such other, further and different acts as they might deem necessary and expedient to prevent the disclosure to the United States Immigration and Naturalization Service of the existence of said conspiracy.

The grand jury further charges that the said defendants, in furtherance of and for the purpose of carrying into execution the said conspiracy, combination, confederation and agreement, did and performed the following overt acts, to wit:

OVERT ACTS.

1. On or about the first day of August, 1947, the defendant, Marcel Max Lutwak, left Chicago, Illinois, in the Northern District of Illinois, Eastern Division, for Paris, France.
2. On or about August 21, 1947, the defendant, Marcel Max Lutwak, and Maria Knoll, alias Maria Irena Lutwak, were ostensibly married in Paris, France.
3. On or about September 9, 1947, the defendant, Marcel Max Lutwak, entered into the United States at New York, New York, as the ostensible husband of Maria Knoll, alias Maria Irena Lutwak.
4. On or about and during the late summer of 1947 at Chicago, Illinois, in the Northern District of Illinois, Eastern Division, the defendant, Regina Treitler, had a conversation with Anne Zapler.
5. On or about and during the late summer of 1947 at Chicago, Illinois, in the Northern District of Illinois, Eastern Division, the defendant, Regina Treitler, had a conversation with Bessie Benjamin Osborne.
6. On or about and during the early fall of 1947 at Chicago, Illinois, in the Northern District of Illinois, Eastern Division, the defendant, Marcel Max Lutwak, had a conversation with Bessie Benjamin Osborne.

7. On or about October 24, 1947, at Chicago, Illinois, in the Northern District of Illinois, Eastern Division, the defendant, Regina Treitler, and the said Bessie Benjamin Osborne departed for Paris, France.

8. On or about November 1, 1947, at Chicago, Illinois, in the Northern District of Illinois, Eastern Division, the defendant, Grace Klemtner, alias Grace Klemtner Knoll, departed for Paris, France.

9. On or about November 4, 1947, at Paris, France, the defendant, Munio Knoll, alias Zygmunt Romankiewicz, and the said Bessie Benjamin Osborne were ostensibly married.

10. On or about November 6, 1947, at Paris, France, the defendant, Leopold Knoll, and the defendant, Grace Klemtner, alias Grace Klemtner Knoll, were ostensibly married.

11. On or about November 13, 1947, at New York, New York, Munio Knoll, alias Zygmunt Romankiewicz, entered into the United States as the ostensible husband of the said Bessie Benjamin Osborne.

12. On or about November 14, 1947, at Chicago, Illinois, in the Northern District of Illinois, Eastern Division, the defendant, Munio Knoll, alias Zygmunt Romankiewicz, and the said Maria Knoll, alias Maria Irena Lutwak, commenced to reside in the same house at 3532 West Adams Street.

10 13. On or about November 17, 1947, at Chicago, Illinois, in the Northern District of Illinois, Eastern Division, the defendants, Marcel Max Lutwak and Munio Knoll, alias Zygmunt Romankiewicz, had a conversation with the said Bessie Benjamin Osborne.

14. On or about December 5, 1947, at New York, New York, the defendant, Leopold Knoll, entered into the United States as the ostensible husband of the defendant, Grace Klemtner, alias Grace Klemtner Knoll.

15. On or about December 6, 1947, at Chicago, Illinois, in the Northern District of Illinois, Eastern Division, the defendant, Leopold Knoll, commenced to reside at 3532 West Adams Street.

16. On or about and during the month of December, 1947, at Chicago, Illinois, in the Northern District of Illinois, Eastern Division, the defendant, Grace Klemtner, alias Grace Klemtner Knoll, and Jane Turner departed for Los Angeles, California.

17. On or about and during the month of December, 1947, at Los Angeles, California, the defendant, Grace Klemtnier, alias Grace Klemtnier Knoll, and Jane Turner commenced to reside together in that city.

18. On or about the last part of December, 1947, at Chicago, Illinois, in the Northern District of Illinois, Eastern Division, the defendant, Regina Treitler, had a conversation with Mrs. Louis Wickers.

19. On or about January 1, 1948, at Chicago, Illinois, in the Northern District of Illinois, Eastern Division, the defendant, Munio Knoll, alias Zygmunt Romankiewicz, and Maria Knoll, alias Maria Irena Lutwak, commenced to reside in an apartment located at 3545 West Maypole Street.

20. On or about and during the summer of 1948 at South Haven, Michigan, the defendant, Munio Knoll, alias Zygmunt Romankiewicz, and the said Maria Knoll, alias Maria Irena Lutwak, were guests of Mrs. Louis Wickers.

21. On or about March 31, 1950, at Chicago, Illinois, in the Northern District of Illinois, Eastern Division, the defendant, Marcel Max Lutwak, obtained a divorce decree in the Superior Court of Cook County from the said Maria Knoll, alias Maria Irena Lutwak, in violation of Section 88, Title 18, United States Code.

12

COUNT TWO.

The April 1950 Grand Jury further charges:

That on or about November 13, 1947, at New York, New York,

MUNIO KNOLL,

alias Zygmunt Romankiewicz,

hereinafter called the defendant, who has been found and may be found and is presently residing in Chicago, Illinois, in the Northern District of Illinois, Eastern Division, did unlawfully and knowingly obtain entry into the United States through the Office of the United States Immigration and Naturalization Service at the Port of New York by means of a false and misleading representation and by concealing material facts, that is to say, the said defendant, Munio Knoll, alias Zygmunt Romankiewicz, did obtain entry into the United States by

falsely representing to the United States Immigration and Naturalization Service at the Port of New York in an application for admission into the United States that he was married to one Bessie B. Osborne, a citizen of the United States, and by concealing and omitting to state to the Office of the United States Immigration and Naturalization Service, at the time of making said application, that he had gone through a marriage ceremony with the said Bessie B. Osborne solely for the purpose of representing himself as her husband in the said application for admission into the United States and with the intention and understanding that he and the said Bessie B. Osborne would not be, or in fact live together, as man and wife, but rather that they would take such legal steps to terminate the formal bonds of their ostensible marriage as they saw fit after the said ostensible marriage had served its purpose to secure the entry of the said defendant, Munio Knoll, alias Zygmunt Romankiewicz, into the United States as a non-quota immigrant under the provisions of Section 232, Title 8, United States Code.

The said April 1950 Grand Jury further charges that the defendants,

Marcel Max Lutwak,
Regina Treitler and
Leopold Knoll,

who have been found and may be found and are presently residing in Chicago, Illinois, in the Northern District of Illinois, Eastern Division, unlawfully and knowingly did aid, abet, counsel, induce and procure the said defendant, Munio Knoll, alias Zygmunt Romankiewicz, to obtain entry into the United States by means of a false and misleading representation and by concealing material facts as aforesaid: in violation of Section 180a, Title 8, United States Code.

14

COUNT THREE:

The April 1950 Grand Jury further charges:

That on or about December 5, 1947, at New York, New York,

LEOPOLD KNOLL,

hereinafter called the defendant, who has been found and may be found and is presently residing in Chicago, Illi-

nois, in the Northern District of Illinois, Eastern Division, did unlawfully and knowingly obtain entry into the United States through the Office of the United States Immigration and Naturalization Service at the Port of New York by means of a false and misleading representation and by concealing material facts, that is to say, the said defendant, Leopold Knoll, did obtain entry into the United States by falsely representing to the United States Immigration and Naturalization Service at the Port of New York in an application for admission into the United States that he was married to one Grace Klemtner Knoll, a citizen of the United States, and by concealing and omitting to state to the Office of the United States Immigration and Naturalization Service, at the time of making said application, that he had gone through a marriage ceremony with the said Grace Klemtner Knoll solely for the purpose of representing himself as her husband in the said application for admission into the United States and with the intention and understanding that he and the said Grace Klemtner Knoll would not be, or in fact live together, as man and wife, but rather that they would take such legal steps to terminate the formal bonds of their ostensible marriage as they saw fit after the said ostensible marriage had served its purpose to secure the entry of the said defendant, Leopold Knoll, into the United States as a non-quota immigrant under the provisions of Section 232, Title 8, United States Code. The said April 1950 Grand Jury further charges that the defendants,

Munio Knoll,
alias Zygmunt Romankiewicz,
Marcel Max Lutwak and
Regina Treitler,

who have been found and may be found and are presently residing in Chicago, Illinois, in the Northern District of Illinois, Eastern Division, unlawfully and knowingly did aid, abet, counsel, induce and procure the said defendant, Leopold Knoll, to obtain entry into the United States by means of a false and misleading representation and by concealing material facts as aforesaid: in violation of Section 180a, Title 8, United States Code.

COUNT FOUR.

The April 1950 Grand Jury further charges:

That on or about November 13, 1947, at New York, New York,

Munio Knoll,
alias Zygmunt Romankiewicz,
Marcel Max Lutwak,
Regina Treitler and
Leopold Knoll,

hereinafter referred to as the defendants and all of whom have been found and may be found and are presently residing in Chicago, Illinois, in the Northern District of Illinois, Eastern Division, did unlawfully and knowingly make and cause to be made a false statement under oath in an application required by the immigration laws of the United States and the regulations prescribed thereunder, that is to say, the said defendants did make and cause to be made under oath to the Office of the United States Immigration and Naturalization Service at the Port of New York in an application for the admission of the defendant, Munio Knoll, alias Zygmunt Romankiewicz, into the United States as a non-quota immigrant under the provisions of Section 232, Title 8, United States Code, the statement that the defendant, Munio Knoll, alias Zygmunt Romankiewicz, was then married to one Bessie B. Osborne; whereas, as the defendants then and there well knew, the defendant, Munio Knoll, alias Zygmunt Romankiewicz, was not in fact then married to the said Bessie B. Osborne: in violation of Section 220(c), Title 8, United States Code.

COUNT FIVE.

The April 1950 Grand Jury further charges:

That on or about December 5, 1947, at New York, New York,

Munio Knoll,
alias Zygmunt Romankiewicz,
Marcel Max Lutwak,
Regina Treitler and
Leopold Knoll,

hereinafter referred to as the defendants and all of whom have been found and may be found and are presently residing in Chicago, Illinois, in the Northern District of Illinois, Eastern Division, did unlawfully and knowingly make and cause to be made a false statement under oath in an application required by the immigration laws of the United States and the regulations prescribed thereunder, that is to say, the said defendants did make and cause to be made under oath to the Office of the United States Immigration and Naturalization Service at the Port of New York in an application for the admission of the defendant, Leopold Knoll, into the United States as a non-quota immigrant under the provisions of Section 232, Title 8, United States Code, the statement that the defendant, Leopold Knoll, was then married to one Grace Klemtner Knoll; whereas, as the defendants then and there well knew, the defendant, Leopold Knoll, was not in fact then married to the said Grace Klemtner Knoll: in violation of Section 220(c), Title 8, United States Code.

18 •

COUNT SIX.

The April 1950 Grand Jury further charges:

That on or about September 9, 1947, at New York, New York,

Munio Knoll,
alias Zygmunt Romankiewicz,
Marcel Max Lutwak,
Regina Treitler and
Leopold Knoll,

hereinafter referred to as the defendants and all of whom have been found and may be found and are presently residing in Chicago, Illinois, in the Northern District of Illinois, Eastern Division, did unlawfully and knowingly make and cause to be made a false statement under oath in an application required by the immigration laws of the United States and the regulations prescribed thereunder, that is to say, the said defendants did make and cause to be made under oath to the Office of the United States Immigration and Naturalization Service at the Port of New York in an application for the admission of one Maria Irene Lutwak into the United States as a

non-quota immigrant under the provisions of Section 232, Title 8, United States Code, the statement that the said Marie Irena Lutwak was then married to the defendant, Marcel Max Lutwak; whereas, as the defendants then and there well knew, the said Maria Irena Lutwak was not in fact then married to the defendant, Marcel Max Lutwak: in violation of Section 220(c), Title 8, United States Code.

A True Bill:

Agnes M. Kennedy
Deputy Foreman.

Otto Kerner, Jr.
United States Attorney

No. 50 CR 464

UNITED STATES DISTRICT COURT
Northern District of Illinois
Eastern Division

The United States of America

v.

Munio Knoll, alias Zygmunt Romankiewicz, Marcel Max
Lutwak, Regina Treitler, Leopold Knoll and Grace
Klemtner, alias Grace Klemtner Knoll

INDICTMENT.

VIO: Sections 88 and 550, T. 16, U.S.C.:

Sections 180a and 220(c), T. 6, U.S.C.

(Conspiracy to obtain the entry of aliens into the United States by means of false statements and by concealing material facts and to defraud the United States of a governmental function; obtaining entry into the United States as alien immigrant by means of false statements and by concealing material facts, and aiding and abetting so to do; and making false statements under oath in applications required by the immigration laws of the United States)

A true bill, Agnes M. Kennedy, Foreman

Filed in open court this 7th day of August,

A. D. 1950.

Ray H. Johnson, Clerk.

20 And afterwards on, to wit, the 8th day of September, 1950 came the Defendant, Regina Treitler by her attorneys and filed in the Clerk's office of said Court her certain Motion To Dismiss in words and figures following, to wit:

21
IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

* * Caption—No. 50 CR 464 * *

MOTION TO DISMISS OF 'REGINA' TREITLER

Now Comes Regina Treitler, defendant herein, by Bernard H. Sokol, her attorney, and moves to dismiss Counts One and Six of the indictment, pursuant to Rule 12, b 3, Federal Rules of Criminal Procedure, and states:—

1. Defendant has been previously indicted in a case pending before this court, No. 50 Cr 276, and the instant indictment is in the same language, intended, as has been announced by the United States Attorney, to replace the indictment in No. 50 Cr 276.

2. Several motions to dismiss have been filed against the indictment No. 50 Cr 276, all of which are pending at the present time, awaiting a reply on the part of the United States.

3. Regarding the instant indictment, No. 50 Cr 464, Regina Treitler now moves to dismiss Count One for the following reasons:—

22 (a) Count One charges a conspiracy to commit crimes which require concert of action and plurality of actors, and hence is indistinguishable from the crimes charged in Counts Two through Six.

(b) Count One is multifarious in that it charges a conspiracy to do an act and a conspiracy to aid and abet the same act.

(c) Count One is not sufficient in form to plead a judgment in bar in another prosecution for the same offense, since it charges a crime without end and this, in terms in conflict with the so-called substantive counts which it incorporates by direct reference.

(d) While it is recognized that a conspiracy is

Motion to Dismiss

separate from a substantial offense, it is an abuse of judicial process to charge conspiracy where the substantive offense is charged as a concerted crime.

4. Count Six does not state a crime. It charges individuals on an aiding and abetting theory as principals, but does not allege or charge a culpable principal.

23. 5. Defendant, Regina Treitler, respectfully requests that the brief heretofore filed in her behalf in support of an identical motion to dismiss in No. 50 Cr 276, stand as a brief in support of the present motion.

Regina Treitler

By: Bernard H. Sokol

Bernard H. Sokol, her attorney.

24 And afterwards on, to wit, the 9th day of October, 1950 came the Defendants, Leopold Knoll and Grace Klemtner Knoll by their attorneys and filed in the Clerk's office of said Court their certain Motion To Dismiss in words and figures following, to wit:

25

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

Caption—No 50 CR 464

MOTION TO DISMISS

The defendants, Leopold Knoll and Grace Klemtner Knoll, by and through their attorneys, A. Bradley Eben and Richard F. Watt, adopt the motion to dismiss Count One filed herein by defendant, Regina Treitler, and each and every ground stated in said motion, to the same extent as though said motion were specifically set out herein. They also adopt the brief in support of the motion to dismiss Count One filed by Regina Treitler, defendant.

As a further ground for their motion that Count One of the indictment be dismissed, in addition to the grounds stated in the motion of defendant, Regina Treitler, defendants, Leopold Knoll and Grace Klemtner Knoll, state that Count One does not allege one conspiracy, but rather three or more separate conspiracies.

The defendant, Leopold Knoll, adopts the motion to dismiss Count Six of the indictment filed herein by defend-

ant, Regina Treitler, and each and every ground stated in said motion to the same extent as though said motions were specifically set out herein. Defendant, Leopold Knoll, further adopts the brief filed by Regina Treitler in support of said motion.

Wherefore, defendants pray that their brief heretofore filed in support of the motion to dismiss Count One on the ground that Count One does not allege one conspiracy, but rather three or more separate conspiracies, be allowed to stand as their brief in support of their present motion to dismiss Count One, and defendants pray further that an order be entered dismissing Counts One and Six of the indictment.

A. Bradley Eben

Richard F. Watt

Attorneys for defendants, Leopold Knoll and Grace Klemtner Knoll.

And on the same day to wit, on the 19th day of October, 1950 being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes District Judge, appears the following entry, to wit:

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

Caption—No. 50 CR 464

This day comes the United States by the United States Attorney come also the defendants Munio Knoll alias Zygmunt Romankiewicz, Marcel Mac Lutway, Regina Treitler, Leopold Knoll, and Grace Klemtner alias Grace Klemtner Knoll in their own proper persons and by counsel and being arraigned upon the Indictment filed herein against them plead not guilty thereto and it is

Ordered that leave be and is hereby granted defendants Munzio Knoll alias Zygmunt Romankiewicz, Marcel Max Lutwak, Leopold Knoll and Grace Klemtner alias Grace Klemtner Knoll to adopt the motion of defendant Regina

Treitler to dismiss Counts One and Six of said Indictment and that leave be and is hereby granted defendants Grace Klemtner alias Grace Klemtner Knoll and Leopold Knoll to file instant a further motion to dismiss Count One of said Indictment and it is

Further Ordered that any moving party desiring to file supporting brief so do by October 19, 1950 and that answering brief be filed by November 8, 1950 and that reply brief be filed by November 15, 1950 and that hearing on said motions be and the same is hereby set for November 27, 1950 and it is

Further Ordered that this cause be and the same is hereby set for trial on January 8, 1951.

29 And afterwards, to wit, on the 27th day of November, 1950 being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

30

IN THE UNITED STATES DISTRICT COURT
For The Northern District of Illinois
Eastern Division

• • Caption—No. 50 CR 464 • •

This cause coming on for hearing on motions of the defendants to dismiss Counts One and Six of the Indictment filed herein against them comes the United States Attorney come also the defendants Munio Knoll alias Zygmunt Romankiewicz, Marcel Max Lutwak, Regina Treitler, Leopold Knoll and Grace Klemtner alias Grace Klemtner Knoll by their counsel and the Court having heard the arguments of counsel and being fully advised in the premises it is

Ordered that the motion of defendant Grace Klemtner alias Grace Klemtner Knoll to dismiss Count One of the Indictment filed herein against her be and the same is hereby granted and said Count One is accordingly dismissed and it is

Further Ordered that the motions of defendants Munio Knoll alias Zygmunt Romankiewicz, Marcel Max Lutwak,

Regina Treitler and Leopold Knoll to dismiss Counts One and Six of said Indictment be and the same are hereby denied.

31 And afterwards, to wit, on the 16th day of January, 1951, being one of the days of the regular January term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Judge John P. Barnes, District Judge, appears the following entry, to wit:

32

IN THE UNITED STATES DISTRICT COURT
For The Northern District of Illinois
Eastern Division

* * Caption—No. 50 CR 464 * *

This being the day to which this cause was continued for further trial again comes the United States by the United States Attorney come also the defendants, in their own proper persons and by their counsel and the Jury and Alternate Jurors heretofore elected, empaneled and sworn herein for the trial of this cause also come and trial of this cause proceeds and the Court having heard further arguments on the defendants motions for judgment of acquittal and being fully advised in the premises it is

Ordered that Counts Two, Three Four, Five and Six of the Indictment herein be and the same are hereby dismissed for want of proper venue and it is

Further Ordered that the defendants' motions for judgment of acquittal be and the same are hereby denied as to Count One of said Indictment and the hour of adjournment having arrived it is

Ordered that the Jury and Alternate Jurors be permitted to separate until January 17, 1951 at 10:00 o'clock A.M.

33 : And afterwards, to wit, on the 17th day of January, 1951, being one of the days of the regular January term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Judge John P. Barnes, District Judge, appears the following entry, to wit:

34

IN THE UNITED STATES DISTRICT COURT
For The Northern District of Illinois
Eastern Division

* * Caption—No. 50 CR 464 *

This being the day to which this cause was continued for further trial again comes the United States by the United States Attorney come also the defendants in the own proper persons and by their counsel and the Jury and Alternate Jurors heretofore elected, empaneled and sworn herein for the trial of this cause also come and trial of this cause proceeds and the defendants by their counsel enter herein their motions for judgment of acquittal as to Counts Two, Three, Four, Five and Six of the Indictment filed herein against them and the Court being fully advised in the premises said motions are denied and during the hearing of final arguments the hour of adjournment having arrived it is

Ordered that the Jury and Alternate Jurors be permitted to separate until January 18, 1951 at 9:00 o'clock A.M.

45

IN THE UNITED STATES DISTRICT COURT
Northern District of Illinois
Eastern Division

* * Caption—No. 50 CR 464 *

TRANSCRIPT OF PROCEEDINGS.

had in the above-entitled cause before the Honorable John P. Barnes, one of the Judges of said Court, and a jury and two alternate jurors, in his court room in the

Transcript of Proceedings

21

United States Court House at Chicago, Illinois, commencing on Monday, January 8, 1951, at 10:00 a. m.

Appearances;

Hon. Otto Kerner, Jr.,

United States District Attorney,

(450 U. S. Court House, Chicago 4, Ill.),

represented by Robert J. Downing, Esq.,

Assistant United States Attorney,

on behalf of the United States;

John Owen, Esq.,

(30 N. La Salle st., Chicago 2, Ill.) and

Martin S. Gerber, Esq.,

(One N. La Salle st., Chicago 2, Ill.),

on behalf of defendant Munio Knoll;

46 Leo J. Bartoline, Esq.,

(231 S. La Salle st., Chicago 4, Ill.)

on behalf of defendant Marcel Max Lutwak;

Bernard M. Sokol, Esq.,

(11 S. La Salle st., Chicago 3, Ill.),

on behalf of defendant Regina Treitler;

A. Bradley Eben, Esq.,

(208 S. La Salle st., Chicago 4, Ill.),

Richard F. Watt, Esq.,

(33 N. La Salle st., Chicago 2, Ill.), and

Bernard F. Weissbourd, Esq.,

(33 N. La Salle st., Chicago 2, Ill.),

on behalf of defendant Leopold Knoll.

(During the morning session twelve jurors were duly qualified and sworn to try the issues herein; after which a recess was taken until the hour of 2:00 o'clock p. m. of the same day, January 8, 1951.)

47

Caption—No. 50 CR 464

Chicago, Illinois

January 8, 1951,

2:00 o'clock p. m.

Met pursuant to recess.

Present:

Mr. Downing

Mr. Owen

Mr. Gerber
Mr. Bartoline
Mr. Sokol
Mr. Eben
Mr. Watt
Mr. Weissbourd

And Thereupon the following further proceedings were had herein:

(Two alternate jurors were duly qualified and sworn to try the issues herein.)

Thereupon Mr. Downing addressed the Court and Jury in Opening Statement on behalf of the Government:

By Mr. Downing:

48 May it please the Court.

By the Court Mr. Downing.

By Mr. Downing: Counsel, and ladies and gentlemen of the jury:

It is my privilege to make a brief opening statement, and to generally outline what the case is about, and what we submit the Government's evidence will show in this case from witnesses who testify from this witness stand in the court room, and from exhibits which are admitted into evidence.

As I have briefly stated, this is a criminal case arising out of an indictment which has been returned by the Federal Grand Jury here in Chicago, charging these four defendants, Munio Knoll, also known as Sygmunt Romanikiewicz, Marcel M. Lutwak, Leopold Knoll and Regina Treitler with conspiring, combining and confederating together to gain the admission into the United States of three aliens, two of whom are the defendants, Munio Knoll and Leopold Knoll, and a third person by the name of Maria Irene Knoll, Lutwak, and in so conspiring, they conspired to violate the laws of the United States by obtaining entry in the United States of these aliens by making false statements and by concealing material facts,
49 and by defrauding the United States of a governmental function that is to say, in the proper exercise of its right to administer the immigration laws, and the operation of the immigration and naturalization service of the Department of Justice.

The indictment further charges that in connection with the entry of two of the aliens, false statements were made

and material omissions were made, and concealment of facts was made in connection with the admission into the United States of the defendants, Munio Knoll and Leopold Knoll.

The indictment further charges in three counts that at the time each of these three aliens, the defendants Munio Knoll, Leopold Knoll and a third person, Maria Knoll Lutwak, at the time they were entered into the United States, an application for admission into this country was made under oath, at which time false statements were made.

The Government expects to prove from the witnesses who testify here, and from the exhibits which are introduced into evidence, that the three defendants, Munio Knoll, Leopold Knoll and Regina Treitler are brothers and sisters; that the defendant Marcel Max Lutwak is their nephew.

50 The Government expects to show and submits it will prove that in December, 1932, in Poland, the defendant Munio Knoll was married to this third alien who came into the United States, Marie Irene Knoll Lutwak; that in 1942, after having lived together for ten years as man and wife, these two persons obtained, during the war, what is known as a rabbinical divorce in Budapest; that in 1942, the defendant Marcel Max Lutwak came to the United States, and thereafter joined the United States Army and was naturalized as a citizen of the United States; and that he received an honorable discharge from the United States Army; that in July of 1947, the defendant Marcel Max Lutwak went to Paris where, during the summer of 1947, the defendants Munio Knoll, Leopold Knoll and the third alien, Marie Irene Knoll Lutwak had gathered; that there the defendant Marcel Max Lutwak, in Paris, met his relatives, and thereafter, on August 21, 1947, the defendants Marcel Max Lutwak and Marie Irene Knoll Lutwak entered into a marriage ceremony in Paris, France, that on September 9, 1947, the defendant Marcel Max Lutwak and Marie Irene Knoll Lutwak entered into a marriage ceremony in Paris, France, that on September 9, 1947, the defendant Marcel Max Lutwak and Marie Irene Knoll Lutwak entered into a marriage ceremony in Paris, France; that on September 9, 1947 the defendant Marcel Max Lutwak brought to the United

51 States Maria Irene Knoll Lutwak, and that she was admitted into the United States at the port of entry in New York as a so-called war bride, based upon the fact that Marcel Lutwak had been honorably discharged as a service man from the United States Army.

The government then, we submit, will show that during the months of September and October, 1947, here in the city of Chicago, the defendants Marcel Max Lutwak and Regina Treitler sought for and obtained other persons, girls, to go to Paris, France, for the express purpose of marrying Regina Treitler's brothers, the other two defendants; Munio Knoll and Leopold Knoll, who, at that time, were in Europe; that in October, 1947, one Bess Osborne, a United States Citizen, who had been in the United States Navy and had an honorable discharge certificate from the United States Navy, was secured, and on October 25, 1947, left with the defendant Regina Treitler, at Chicago, and proceeded by airplane to Paris,

52 France; that in Paris, France, she met the defendant Munio Knoll, and the defendant Leopold; that on November 1, 1947, another person by the name of Grace Klemtnér, a citizen of the United States, who had been in the service of the United States Army as a WAC, and had received an honorable discharge certificate from the United States Army; on November 1st, she proceeded by way of airplane travel to Paris, France, where she was met by the defendant, Regina Treitler, and there she met the defendants Munio Knoll and Leopold Knoll.

The Government then expects that the evidence will show and prove that on November 3, 1947, the defendant Munio Knoll and the first person Bess Osborne entered into a marriage ceremony in Paris, France, and that on November 6, 1947, the defendant Leopold Knoll and the second person, Grace Klemtnér, entered into a marriage ceremony in Paris, France; that thereafter, on November 12, the defendant, Munio Knoll along and accompanied with Bess Osborne left Paris by airplane and proceeded to New York, where they arrived on November 13th; that the defendant, Munio Knoll, was admitted into the United

53 States as a male war bride of a person honorably discharged from the United States Service, that being Bess Osborne; that they thereafter came to Chicago on the same date, November 13th.

The Government then expects to show that on December 5, 1947, the defendant Leopold Knoll and Grace Klemtner came to the United States from Paris; that the defendant, Leopold Knoll, was admitted to the United States as a male war bride because of the fact that Grace Klemtner had an honorable discharge certificate and had served in the United States Army.

We submit that the Government will show that the defendant, Leopold Knoll, came to Chicago, and that Grace Klemtner went directly to Chicago temporarily and then to Los Angeles, California, where she has resided since that time.

We submit that the evidence will show that neither the defendant Marcel M. Lutwak and Marie Irene Knoll Lutwak have ever lived together as man and wife.

We submit further that the evidence will show that the defendant, Manio Knoll, and Bess Osborne, after they arrived in Chicago, have not and up to this date, 54 have never lived together as man and wife, and we submit that the evidence will show that approximately one year ago, March, 1950, the defendant, Marcel Lutwak, obtained a divorce from Marie Irene Knoll Lutwak.

We submit that all these marriages, and we believe the evidence will show, were for the express purpose of bringing into the United States aliens under the so-called War Bride Act, and that there was never any intention of living together, and that the facts proved that they have never lived together as man and wife.

I ask you ladies and gentlemen, as this testimony is produced here in the court room, to listen only to the testimony from the witnesses who testify here on the witness stand, and pay attention to the exhibits which, when they are admitted into evidence with the court's permission, will be read to you.

Thank you.

55 Thereupon Mr. Eben Addressed The Court And Jury in Opening Statement On Behalf Of The Defendants.

By Mr. Eben: May it please the Court, Counsel for the Government, Ladies and Gentlemen of the Jury:

Rather than take up your time with a long involved statement as to what the defense will be here, a statement

which perforce should necessarily be made by all of the counsel representing the four defendants, I have been elected, so to speak, to make the statement on behalf of all defendants here. In that way I think we will proceed much more rapidly and expeditiously.

The one thing that the jury should know at the outset of the case is what the charges are upon which the defendants in this case, and there are four of them, as you know now, are brought before this court and this jury.

The representative of the Government, Mr. Downing, who appears here as an Assistant United States Attorney, has told you briefly what the indictment is about, and at the risk of being somewhat repetitious I again am going to tell you what the charges are in the indictment, 56 because it is most important and most imperative that at this stage of the proceedings you know why these four people are here.

The indictment, as his Honor Judge Barnes informed you, is merely a charge. It is not evidence of anything. This particular indictment in this case is in what we call six counts.

The first count is a conspiracy count. By that count the Government, or at least the grand jury here in this district, has merely laid a charge against these defendants, that they conspired to violate certain laws of the United States.

Of course, at the proper time during the course of the case his Honor Judge Barnes will instruct you as to what are the elements of a conspiracy, and presumably you will follow those instructions.

This count says that the four defendants here agreed to enter into a conspiracy by virtue of which the United States Government, in the form of the Immigration and Naturalization Service, was deprived of its right to carry out their activities in complete honesty and without 57 fraud and deceit. In other words, they are saying these people conspired to conceal some particular act, some particular statement, some particular activity from the Immigration and Naturalization Service, and that the Immigration and Naturalization Service had a right to know about the particular act in question.

At the same time they also say in the count that these four people conspired to make some affirmative misstate-

ment, and I want you to note that now also, that the charges in the indictment are really twofold. There are two sides to the coin.

On one side they say the defendants concealed something they should have said, and in the other place they say they said something falsely when they did say it.

As I say, that is the conspiracy count.

The Government of course must prove these people did enter into an agreement to do this, and that they did some act to carry it out.

There are four other counts in this indictment, which are known technically as the substantive counts. They charge, Ladies and Gentlemen, directly that these defendants did make the false representation that I discussed before, and did conceal the material facts that I also 58 mentioned to you before. They are separate and apart, and I would like to make that very clear to you, they are completely separate and apart from the conspiracy part of the indictment which of course merely has to do with the agreement and carrying out of an act.

Without boring you and going into detail in connection with these charges I would like to tell you that each and every one of these defendants has filed his or her plea of not guilty in this case, and by that plea they say to you ladies and gentlemen of the jury that they are not guilty of each and every one of the essential allegations which are contained in this indictment and, as Judge Barnes has already told you, they are presumed to be innocent and that presumption lasts until evidence is adduced from the witnesses which theoretically or materially will overcome it.

I again say to you, please keep an open mind as the evidence develops here. The defense does not have an opportunity to put on its evidence until all of the Government's testimony is in, and only then may we proceed.

So I beg you, in doing justice to not only my client, 59 but the other defendants who sit here, to keep your minds open until you hear all of the evidence in the case.

Thank you.

60 Thereupon The Government Introduced The Following Evidence:

By The Court: Call your first witness:

Transcript of Proceedings

ANNE ZAPLER, called as a witness herein on behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Downing.

Q. State your name, please.

A. Anne Zapler.

Q. What is your address, Mrs. Zapler?

A. 907 North Fourteenth street, Phoenix, Arizona.

Q. And at the present time what is your business or occupation?

A. I am a housewife.

By The Court: How do you spell your name?

The Witness: A-n-n-e Z-a-p-l-e-r.

By Mr. Downing:

Q. Did you previously reside in Chicago before residing in Ariona?

A. Yes, sir.

Q. Where did you reside in Chicago?

A. At 3543 West Madison street.

Q. And what was the date you last resided in Chicago?

A. We left Chicago on August 28, 1948.

Q. 1948?

A. No, 1949.

Q. While you were in Chicago did you operate, you and your husband, operate a business here?

A. Yes.

Q. What was the name of the business you operated?

A. Garfield Park Food Shop.

Q. Where was that located?

A. 3553 West Madison street.

Q. And from and until what date did you operate that business?

A. From the year 1939 through 1948.

Q. Are you acquainted with the defendant Marcel Max Lutwak?

A. Yes.

Q. Are you acquainted with Regina Treitler?

A. Yes, sir.

Q. Do you see them in the court room, please?

A. I see Mrs. Treitler there, and I see Marcel.

By Mr. Downing: Let the record show you have
62 pointed them out in the court room.

By the Witness: Mrs. Treitler and Marcel.

By Mr. Downing:

Q. How long have you known the defendant Regina Treitler?

A. Approximately from about 1942.

Q. Since how long, or since what date, approximately, have you known the defendant Marcel Lutwak?

A. Approximately the same time also.

Q. Directing your attention to the defendant Regina Treitler, did you ever have any conversation with her regarding her brother or brothers in Europe?

A. Yes, sir.

Q. As best you can recall, when was that conversation?

A. In the late summer I spoke with Mrs. Treitler, in the late summer of 1947.

Q. Where was this conversation at?

A. In our store.

Q. And do you recall who was present at that time?

A. Well, the first time, as I recall, there were customers present.

Q. And you don't recall at this time the names of any of those customers?

63 A. No, sir, I do not.

Q. What was said at that time by Mrs. Treitler and what did you say, at that particular time, as best you can recall?

By Mr. Eben: I object.

By Mr. Gerber: Objection.

By the Court: As far as I can see, what may have been said, if anything, would only be admissible as against Mrs. Regina Treitler.

By Mr. Downing: However, the conspiracy, naturally, is pleaded there in the indictment, and if it is proved we submit the acts and declarations during the course of the conspiracy are equally admissible against others.

By the Court: If made pursuant to the conspiracy and in furtherance thereof.

By Mr. Downing: That is right, your Honor, and we submit that in so far as the time and

By the Court: I have stated that what may have been said will be admissible against the defendant Treitler, Q

and it will be received—as I am presently advised, it will be limited to Mrs. Treitler. If the facts hereafter warrant its receipt and consideration against the other 64 defendants, call my attention to the fact and I will advise the jury.

By Mr. Downing: All right.

By the Court: It is now received as against the defendant Regina Treitler.

By Mr. Downing: Thank you, sir.

By Mr. Downing:

Q. Will you relate, as best you can recall at this time, what Mrs. Treitler said and what, if anything, you said at that particular time and place?

A. To the best of my recollection, all that was said was, I was asked if I knew of any girls who could go to Europe and marry her brother and bring him here to the States.

Q. Do you recall what, if anything, you said at that time?

A. No, I don't.

Q. Thereafter, did you have occasion to discuss with the defendant Regina Treitler this same matter, that you have just previously referred to?

A. Yes, sir.

Q. And where did you have this conversation?

A. In our store.

Q. And approximately how long after the first 65 conversation was this second conversation?

A. I don't recall exactly, but it must have been a couple of weeks later.

Q. And, as best you can recall, who was present at that time and place?

A. Nobody.

Q. Will you relate to the Court and jury what was said by the defendant Regina Treitler and yourself at that particular time and place?

By Mr. Eben: May we have the same objection?

By Mr. Gerber: Same objection.

By the Court: Same ruling.

By Mr. Downing:

Q. Will you relate what was said?

A. To the best of my recollection, I was asked by Mrs. Treitler if I knew of any girl who could go to Europe

and bring back her brother who, I was told then, was in a concentration camp, and had been starved, and badly beaten, and naturally it was a heart-rending story. At the time I knew of no one.

Q. Was there anything else said about the matter at that time and place?

A. Not that I can recollect.

Q. Did you have any further conversation with 66 Mrs. Treitler about the matter?

A. No, sir.

Q. Directing your attention to the defendant Marcel Lutwak, if you know, where did he live in 1947?

A. Directly above us, at 3543 West Madison street.

Q. That was right above your store?

A. No, above our apartment.

Q. Did you ever have any conversation with the defendant Marcel Lutwak regarding this matter that you had discussed and about which you testified, concerning your conversation with Mrs. Treitler?

A. I probably did, but I don't recollect exactly what it might have been.

Q. You can't now recall any such conversation?

A. No, sir.

Q. That is, in substance, what was said?

A. No, sir. It was, naturally, about the same thing, but the substance—

By Mr. Gerber: I object.

By the Court: Strike it out.

By Mr. Downing:

Q. Did you have occasion to talk to him after you first talked to Mrs. Treitler about this subject-matter about which you testified that your conversation was with 67 Mrs. Treitler?

A. Pardon me, do you mean if I spoke with him about the same thing?

Q. That is right, yes.

A. I might have, but I don't remember.

Q. You don't recall at this time?

A. (No response.)

Q. Thereafter, did you ever introduce any girls to either of the defendants, Regina Treitler or Marcel Lutwak?

A. Yes.

Q. Whom did you introduce?

A. Bess Osborne.

Q. And, when, approximately, did you introduce Bess Osborne?

A. It was in the late—some time in September, the year 1947.

Q. And to whom did you introduce Bess Osborne?

A. To Marcel Lutwak.

Q. That is the defendant Marcel Lutwak and where did you introduce Bess Osborne to the defendant Marcel Lutwak?

A. In our store.

Q. Who else was present, if you recall?

68 A. No one, to my recollection.

Q. Did you have any conversation between the three of you at the time you introduced Bess Osborne to the defendant Marcel Lutwak?

A. As best as I can remember—

By Mr. Gerber: I object to the conversation, so far as my client is concerned.

By Mr. Sokol: I would like to save the same ruling of the Court.

By Mr. Eben: Also on behalf of Leopold Knoll.

By Mr. Gerber: My client was not present.

By Mr. Downing: I submit this falls in the same category. The Government submits it will be—after evidence is in, it will be admissible against other defendants. I recognize that at the present time it perhaps is limited to the defendant Marcel Lutwak.

By The Court: The conversation now offered will be received at the present time only against the defendant Marcel Lutwak.

By Mr. Downing: Your Honor, in order to expedite this, I am just wondering if, instead of all these objections, if one objection could suffice. We probably could move along a little faster. I don't know what your

69 Honor's pleasure is in that matter.

70 By The Court: In these cases there is a great lot of objection just at first, and then later there are not so many.

By Mr. Downing:

Q. Directing your attention to the matter about which you were testifying, at the time you introduced defendant Marcel Max Lutwak to Bess Osborne, did you have any

conversation between the three of you at the time you introduced Bess Osborn?

A. To the best of my knowledge, I introduced—

By Mr. Eben: May I interject, your Honor, this purports apparently to be conversation between this defendant and someone who is not a defendant in this case, namely, Bess Osborne, and it is clearly inadmissible, whether the conspiracy is proved or not proved.

By Mr. Downing: Perhaps counsel has overlooked the fact that she said she was introducing Bess Osborne—

By The Court: Three persons.

By Mr. Downing: That is right.

By Mr. Eben: Three persons.

By Mr. Downing:

71 Q. Do you recall the question?

A. Is that the same question?

Q. Yes.

A. And I did mention she was an ex-Wave.

By The Court: I can't hear you.

By Mr. Gerber: Neither can I.

By The Witness:

A. I did mention the fact—I introduced Bess and Marcel and mentioned the fact that she was an ex-Wave.

By Mr. Downing:

Q. And was there any other conversation between the three of you? That is, Marcel and Bess and yourself at that particular time.

A. No, sir.

Q. Thereafter, that is, after you introduced Bess Osborne to the defendant Marcel Lutwak, did you have any conversations concerning this matter with either the defendant Regina Treitler or the defendant Marcel Max Lutwak?

A. Not that I recall, I didn't.

Q. You have no present recollection of any further conversations with either of the defendants, Marcel Max Lutwak or Regina Treitler, about this matter?

72 A. That happened later?

Q. Yes.

A. After I knew—

Q. Yes.

A. The only thing I can relate, to the best of my knowledge, is that I knew Bess was going—

Q. No.

By Mr. Gerber: I object to this.

By The Witness: I didn't understand the question.

By Mr. Downing:

Q. Did you have any further conversation?

Strike it out.

Do you have any recollection of any further conversation with the defendant Marcel Lutwak or the defendant Regina Treitler concerning this subject matter? That is, recollection beyond what you have testified to already.

A. No, I was just going to tell you what I thought—well, then, no.

Q. About conversation.

A. No.

Q. You have no further recollection of any conversation about this matter other than what you have testified to?

A. Well, I don't know if I understand you, but I did have conversation again?

Q. Yes.

A. Yes.

Q. Approximately when was that?

A. That was also in September of 1947.

Q. And with whom did you have this conversation?

A. I had conversation with Mrs. Treitler and with Marcel, both of them.

Q. Where did you have these conversations?

A. In our store.

Q. What to your recollection did the defendant Treitler and you talk about?

By Mr. Gerber: Object to this for the same reason, on behalf of my client.

By The Court: Who was present?

By The Witness: No, sir.

By The Court: Who was present?

By The Witness: No one, your Honor?

By The Court: When you talked to Mrs. Treitler, who was present?

By The Witness: No one.

By The Court: Well, yourself?

74 By The Witness: Yes, sir.

By The Court: And Mrs. Treitler?

By The Witness: Yes, sir.

By The Court: Anybody else?

By The Witness: No, sir.

By The Court: On the present state of the record it will be received as against Regina Treitler only.

By Mr. Downing:

Q. Will you tell us the substance as best you can recall what that conversation was?

A. This was after I knew Bess was going—

Q. Yes. What was said at that time and place?

A. Well, that she would—oh, I understand.

Q. What did Regina Treitler say and what did you say, if anything?

A. To the best of my knowledge, she wanted—

By Mr. Gerber: I object, "to the best of my knowledge," if the Court please.

By The Witness: Maybe I used the wrong word. I am sorry.

By The Court: What is your best recollection?

By The Witness: My best recollection was that they wanted a girl, preferably an ex—

By Mr. Sokol: I object. She is asked for conversation.

By Mr. Bartoline: I object.

By The Court: She doesn't have to use collegiate English. All she need to use is ordinary English. Let her alone now.

By The Witness: Thank you.

By The Witness:

A. She would like a girl to go to Europe to marry her brother who, as I related before, was in a concentration camp, and then I had introduced Bess to him, and Bess had consented to go, and they were very happy about it, and we knew Bess was going over to Europe to marry Roldi, and that is about all I can think of to tell you.

By Mr. Downing:

Q. Did you ever have any conversation with either the defendant Regina Treitler or Marcel Max Lutwak regarding any terms or conditions under which the girl was to go to Europe?

A. No, sir.

By Mr. Gerber: I object, leading.

By Mr. Sokol: I want that in. Let that in. She said, "No."

By Mr. Downing:

Q. During all this time that you had talked to Mr. Lutwak and Mrs. Treitler was the defendant Marcel Lutwak

to your knowledge residing above your residence at that time?

A. Yes, sir.

By Mr. Downing: That is all. They may cross examine.

Cross Examination by Mr. Sokol.

Q. Mrs. Zapler, I am Mrs. Treitler's attorney, Mr. Sokol. Mrs. Treitler had been a regular customer of yours for some time?

A. Yes.

Q. She customarily traded in your store and you saw her frequently, is that right?

A. Yes.

Q. Any conversation you might have with her would not be something unusual? You would pass the time of day and discuss general matters frequently, isn't that right?

A. When she came in as a customer, yes, sir.

77 Q. With respect to the conversation about which you have testified, do I recall your saying that Mrs. Treitler discussed the plight of both Poldi and Munio or Zigmund with you, about their plight in Europe and their period in a concentration camp?

A. Yes, sir.

Q. So that you knew that each had suffered that?

A. At the beginning I only knew of one.

Q. But later it came to your attention that both had had that experience?

A. Yes.

By Mr. Sokol: That is all.

By The Court: Any further cross examination?

By Mr. Eben: No cross examination on behalf of my client, your Honor.

By Mr. Bartoline: No cross examination.

By Mr. Gerber: No cross examination, your Honor.

78 *Redirect Examination by Mr. Downing.*

Q. Mrs. Zapler, at the time you had these conversations about which Mr. Sokol asked you, concerning the plight of the two brothers of Regina Treitler, was that at the same time you had the conversation about which you testified on your direct examination?

A. I don't understand your question.

Q. At the time Mrs. Treitler told you about the plight of her brothers, what else did she tell you about her brothers at that particular time, or about this matter at the time?

A. As I stated before—

By Mr. Gerber: Same objection, your Honor.

By The Court: Same ruling.

By The Witness: Shall I answer?

By Mr. Downing:

Q. Yes.

By The Court: It will be admissible as against Mrs. Treitler.

A. The only thing I can remember is, as I said before, that her brother was in a concentration camp and was badly beaten, and they would like very much to have someone to go to Europe and marry him and bring him here to this country, and the main thing then was the good deed that would have been done, because the stories were heart-rendering, and the only thing I could see was a good deed and to bring somebody here like that—

By Mr. Downing:

Q. Do you recall anything else she said about the girl going to Europe?

A. Yes, they wanted someone who had been in the service, an ex-service girl.

Q. What else was said at that time?

A. Well, I know that they had said that they would pay her way, and also—

Q. Was this the defendant Regina Treitler you are referring to?

A. Yes, sir.

Q. And what else was said about that matter besides being an ex-service girl and that she would pay her way?

A. And also she would receive a fee.

Q. Pardon?

A. That she would also receive something for it.

Q. Yes?

A. But otherwise I can't recall.

80 Q. Do you recall anything else that was said about the matter, other than what you have previously testified?

A. I can't remember now.

Q. In order to refresh your recollection, did she say anything to you at that time about the parties not living together?

By Mr. Sokol: I object, leading.

A. Yes, sir.

By Mr. Eben: And it is far beyond the limits of redirect examination. I understand Mr. Sokol asked about whether or not there had been some talk about her brothers in a concentration camp, and it ended there, and now counsel is going into other matters that he might have inquired into on direct examination, but not redirect examination.

By Mr. Downing: This is part of the conversation he asked her about, and on redirect examination I think we can clarify the conversation. We have a right to ask on any matter he has touched upon in cross examination.

By Mr. Eben: But he is going beyond those matters.

By The Court: Limit your question. The objection is overruled.

81 By Mr. Downing:

Q. Now, do you recall?

A. Yes, sir. I also was told that this girl—that they would be married in Europe and at the end of the period of six months, they could be divorced and they would not have to consummate the marriage. That I recall.

Q. Do you recall anything else that was said?

A. No, sir.

By Mr. Downing: That is all.

By Mr. Eben: Just for the record, your Honor, I would like to have the last matter stricken on the basis of the objection I made before, on the ground that it is beyond the limits of the redirect examination.

By The Court: It will be denied on that ground.

Recross Examination by Mr. Sokol.

Q. Mrs. Zapler, I put to you the fact that you have just testified with respect to a question asked you by Mr. Downing, and that you are testifying as to the recollection of what Bess Osborne may have told you at some
82 time, not what Mrs. Treidler told you.

A. No, sir, I was told that at another time.

Q. What time did this conversation take place?

A. I cannot recall the exact date, but I know it was in September of 1947.

Q. Who was present at that time?

A. No one besides myself and Mrs. Treitler.

Q. Now, may I ask this question of you. Do you know what is meant by the Jewish term "red a shidach"? I am referring to the Jewish term for the benefit of the jury.

By Mr. Downing: If your Honor please, I don't know that this has any appropriateness or materiality or relevancy to these facts under examination.

By The Court: I think the examination ought to be in English.

By Mr. Sokol: Well, I am asking the witness—
Very well.

By Mr. Sokol:

Q. I put to you, Mrs. Zapler, the fact that it is customary, and that it would be no surprise to you among Jewish people for a member of a family, such as a sister, to arrange a marriage for a relative or brother, is
83 that right?

By Mr. Downing: If your Honor please—

By The Witness:

A. Not in these days, sir.

By Mr. Sokol:

Q. That is your belief, isn't that right?

By Mr. Downing: Objection, your Honor. She has answered the question.

By The Court: Sustained.

By Mr. Downing: Is there any further cross examination?

By Mr. Gerber:—I would like to ask one question, your Honor.

Cross Examination by Mr. Gerber.

Q. Mrs. Zapler, do you mean to tell us that you have never heard these days of a marriage which was arranged by members of a family among Jewish people?

By Mr. Downing: Objection, your Honor.

By Mr. Gerber: I think that is very material.

By Mr. Downing: That has been discussed by Mr. Sokol. It is just repetition. Theoretically each one of
84 these attorneys can get up and ask the witness the same thing. He has a right to ask a question, certainly, but all four of this group of attorneys do not have the right to repeat and repeat the same question.

By Mr. Gerber: Your Honor, I am not repeating. I call your attention to the fact that all four attorneys have a right to examine the witness for their individual client anything they think that is material with reference to their client, and not be confined to one attorney speaking for all of us.

By The Court: We won't pursue that argument, and we are not going to drag this case out unreasonably for any such theoretical right.

By Mr. Gerber: I am only asking your Honor that I be given the right to cross-examine on matters I think material to my client.

By The Court: You may ask a question.

By Mr. Gerber: Will you read the last question?
85 (Last question read.)

By The Witness:

A. Not in these days, no, sir, I have not.

By Mr. Gerber: That is all.

By Mr. Downing: That is all.

(Witness excused.)

MARIA LUTWAK, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

By The Witness: Your Honor, may I state a few words?

By The Court: Can you talk to me?

By The Witness: Yes.

By The Court: You don't need to talk to me, Madam. All you have to do is they will put questions to you and if any improper questions are put, counsel will unquestionably object to them, and I will sustain the objection. All you have to do is tell the truth, the whole truth and nothing but the truth and nothing will happen to you.

86 *Direct Examination by Mr. Downing.*

Q. Will you state your name, please?

A. Maria Lutwak.

Q. Will you keep your voice up loud enough so that we can hear you out here, please?

What is your address?

A. 1791 Walton Avenue, New York.

By Mr. Eben: I cannot hear you.

By the Court: You must speak up so that that last gentleman can hear you.

By the Witness: Shall I repeat my address?

By the Court: No, I am just telling you to speak loud so that everybody can hear you. That will save time and save wear and tear on you.

By Mr. Downing:

Q. Your address is 1791 Walton Street?

A. 1791 Walton Avenue, New York.

Q. What is your business or occupation?

A. I am an assistant buyer in a department store in New York, Gimbel's store in New York.

Q. Have—How long have you been employed as an assistant buyer at Gimbel's in New York?

A. One year.

87 Q. Where were you born?

A. I was born in Poland.

Q. Of what country are you now a citizen?

A. Of Poland.

Q. Are you acquainted with the defendant Munio Knoll?

By Mr. Eben? Objection. I have an argument in connection with the competency of this witness. It may lead to a voir dire examination. I think it ought to be made outside of the presence of the jury.

By the Court: Step into the jury room, Ladies and Gentlemen.

(The following proceedings were had out of the presence and hearing of the jury:)

88 By Mr. Eben: I desire to point out to the Court, on the basis of counsel's opening statement, that this witness was married to Munio Knoll, who is one of the defendants here.

By the Court: Now, what did you say, Mr. Eben?

By Mr. Eben: I say, it appears from counsel's opening statement, that is, counsel for the Government's opening statement, that this particular witness was at one time married to one of the defendants in this case whose name appears as Munio Knoll. He also stated to the jury that there was some sort of a divorce; I believe he referred to it as a rabbinical divorce. We don't know exactly whether the Government is going to contend that this witness is still married to Munio Knoll or is not married to Munio Knoll. If they do so contend,

then she is obviously incompetent to testify not only against Munio Knoll, but also against his alleged co-conspirators here on trial.

If, on the other hand, he is making another contention, I believe we ought to know that at this particular time. I think the facts will show there were a number of marriages involved here, but we don't want to be put in 89 the position of having this testimony go in, and then at some later date have some other witness' testimony also go in, on the grounds that this particular witness was in fact all the time married to Munio Knoll. I think it is proper to make the objection at this particular point, and I therefore ask the Court to call upon the District Attorney to announce what his theory is with respect to these marriages.

By Mr. Downing: Your Honor, I do not think the Government at this particular time has to make a stand one way or the other. If he wants to make a motion, then let him make a motion, and we will see where we are at when he makes the motion. Merely calling upon the Government to state its theory of its case I think is premature. He wants to blow hot and cold. If we take one position, he will blow hot, and if we take another position, some other counsel will blow cold.

I submit they are trying to straddle both horns of the dilemma. They want us to make a decision for them what conclusion to draw from the facts, and I do not think the Government is called upon to make any election at this stage.

90 By the Court: I do not think that the Government can make an election to be effective. I think the facts will probably make the election if one is to be made.

By Mr. Eben: I challenge the competency of this witness, and I think we ought to have a voir dire examination on it.

By the Court: That she is married to one of the defendants?

By Mr. Eben: Yes.

By the Court: What do you say about that?

By Mr. Downing: I think the facts are these: that this person participated in a marriage ceremony in 1932; that she obtained a rabbinical divorce. According to my

information, according to the law in the country in which she obtained it, it is not recognized as a civil divorce; that thereafter there was a marriage ceremony performed with Marcel Lutwak, and thereafter Marcel Lutwak in this country obtained a divorce from the witness.

By the Court: Now, who was she married to then?

By Mr. Downing: Munio Knoll.

By Mr. Gerber: My client, Munio Knoll, otherwise known as Zigmund Romankiewicz. They were married in 1932.

By the Court: Then there was a rabbinical divorce?

By Mr. Gerber: In 1942, in Budapest, by a rabbi.

By the Court: Then she married Marcel Max Lutwak?

By Mr. Weissbourd: Yes, in 1947.

By Mr. Downing: March 21, 1947.

By the Court: Then she divorced him?

By Mr. Weissbourn: He divorced her on March 31, 1950.

By the Court: Now she is offered as a witness against—

By Mr. Gerber: Against all the defendants.

By the Court: All of the defendants, and it is objected to, that she is not competent because of what?

By Mr. Eben: Because she is married to one of the defendants, Munio Knoll. Under the Government's theory they have just announced—

By Mr. Downing: I did not announce any theory. I stated what the facts are.

92 By the Court: Well, you are objecting—

By Mr. Eben: Let me review it for your Honor.

By the Court: I have got that. I just want to get your point.

By Mr. Eben: My objection is, she is incompetent because the Government now contends in its statement before your Honor, made in the course of the last three or four questions, that she was married to Munio Knoll, one of the defendants in this case, in 1933; that thereafter, they went through a formal divorce. He says that he intends to use her, then he intends to use another wife later on. I say he cannot have his cake and eat it. Either she is married to him or she is not married to him.

By Mr. Downing: Your Honor, to carry this argument

just a step further, if the Government was forced to make a statement, regardless of what statement it made, I submit this witness—let us assume she is married presently to both of these people. I submit, your Honor, that her testimony, except for confidential communications, under the law today is properly admissible.

93 By the Court: That is my recollection of it. Are you making the objection seriously, that she is incompetent?

By Mr. Downing: It is not the law any more.

By Mr. Eben: We are prepared to argue that.

By Mr. Downing: Except for confidential communications.

By the Court: What is your last and best case?

Mr. Weissbourd: Walker *vs.* United States, Your Honor. The distinction is in cases in which she may testify for her husband and cases where she may not testify for him.

By Mr. Downing: That is not a Supreme Court decision, however. I have just sent down for some cases, too, your Honor. I have Wigmore, too.

By the Court: What is this?

By Mr. Weissbourd: This as a case in the Third Circuit to the same effect, Bruno *vs.* United States—it is the Sixth Circuit.

By the Court: Get me 290 United States, Funk *vs.* United States.

By Mr. Downing: Here it is, right here. If your Honor please, I have here Wigmore, I think is very
94 pertinent.

By the Court: Yes. Let me see that rule.

By Mr. Downing: Rule 26, I think it is.

By the Court: What is this?

By Mr. Downing: It is Wigmore at the places marked with the two white pieces of paper, and the pencil check mark in those two places.

If your Honor please, there is also a case here, United States *vs.* Mitchell, 2nd Circuit, just on the point. There is also a statute in Illinois, in the criminal code of Illinois.

By the Court: What does that say?

Mr. Downing: That says:

"In all criminal cases, a husband and wife may testify for or against each other provided that neither may tes-

tify as to any communication or admission made by either of them to the other, or as to any conversation between them during coverture, except in cases where either is charged with an offense against the person or property of the other, or in case of wife abandonment, or where the interests of their child or children are directly involved, or as to matters in which either has acted as agent of the other."

95 By the Court: Give me 28 U. S. C. 32, please.

By Mr. Weissbourd: If I may, your Honor, I would like to point out the sequence of events after the Funk case as to which rule is applicable at this time. The Funk case abolished the common law rule that the husband or wife may not testify for each other.

The Funk case does not encompass the right of the wife to testify against the husband. The courts have pointed out there is quite a difference between that rule and the prior rule. After the Funk case, the courts enacted Rule 26 of the Federal Rules of Criminal Procedure. That embodied the doctrine of the Funk case to the effect the Supreme Court could later interpret the law of the United States on questions of evidence, particularly as to evidence of competency, since all evidence questions are open to interpretation by the Supreme Court. However, this question has not been in the Supreme Court again. It has been decided, however, by four Circuits and by the District of Columbia.

96 By the Court: I have something on my mind, and then I will hear you further.

Go ahead.

By Mr. Weissbourd: It seems to me, your Honor, that the authorities are quite clear that the Federal Courts apply the common law of the United States under Rule 26 of the Federal Rules of Criminal Procedure.

Under the common law of the United States the husband is incompetent to testify against the wife, the wife is incompetent to testify against the husband.

As for testifying for each other, the Funk case has now said that they may testify for each other, but they may not testify against each other, and particularly in criminal cases.

The policy reasons why the Supreme Court in the Funk case permitted testimony on behalf of the husband or

wife are quite different than those which prevent testimony against.

The ancient rule preventing the testimony in either case was based on the identity of interests of the husband and the wife, and the rule requiring that interested parties may not testify. With that change, it does not remove the strong policy of the common law against breaking up the marriage relationship by permitting husbands and wives to testify against each other.

Since the Funk case there has been a number of decisions which discuss the Funk case and which discuss Rule 26 of the Federal Rules of Criminal Procedure.

The latest decision is the Walker case, which your Honor has read, and in which the Supreme Court has denied certiorari, allowing that decision to stand.

That was in the Second Circuit.

The Bruner case in the Sixth Circuit holds to the same effect.

By the Court: I have not read that case.

By Mr. Downing: That is 168 F. (2d) 281.

By the Court: What have you to say in your favor?

By Mr. Downing: I think, starting out with the Funk case, which liberalizes the attitude of the courts, and the Supreme Court expressly indicated it should be liberalized, and with the authority of Wigmore, who expressly indicates in his treatise that the tendency of the courts is to seek the truth; that in seeking the truth this old common law theory that husband and wife are incompetent for or against each other should be done away with. I don't think counsel really meant everything he said, because it is a well known and well established fact, and it is mentioned in the cases he cited, that there are exceptions to this rule that he says is so iron clad, like in the white slave cases, or where the crime is against the body of one of the spouses. So it is not such a hard and fast rule.

As far as denying certiorari is concerned, we know the Supreme Court has often said that does not necessarily mean they agree with what the lower court said.

The Second Circuit in the case I have handed to your Honor I think is the Mitchell case, if I am not mistaken, but anyhow it is the case in 138 F. 2d. I think very pointedly spells out the theory that both Funk v. U. S. and Wigmore indicates should be followed.

It points out also what I submit should be considered by the court in applying Rule 26 of the Federal Rules of Criminal Procedure, that in Illinois, although counsel says that that does not bother this procedure here in the Federal Court, there has been adopted in the Criminal Code in Illinois this provision which I have indicated authorizes and permits testimony of one spouse against the other spouse, except for conversations, which as Wigmore says, are confidential communications.

We do not submit those things are permitted to be testified about. I submit here that there is nothing like that to be testified about, but as to acts and facts, I submit that after the decision in the Walker case, that on page 568 thereof, the court there expressly indicates that it is not settled, but that in light of reason it is a proper type of testimony to have, and I submit that case does 100 not stand on all fours with the situation here.

In the Mitchell case Judge Clark, in the Second Circuit, pointed out in the first part of that decision, that there is a proper distinction between the privileges applicable to acts of the parties, which is proper to be testified by either spouse, or confidential communications. There is no representation here, and we are not to that point, where there has been any testimony concerning confidential communications.

Furthermore, as Wigmore points out, this privilege is not applicable where the parties have been separated for a period of years, where there has not been any home life, which is the purpose of the privilege, to protect the home life.

By the Court: Where is that?

By Mr. Downing: That is in Wigmore, 2335, Subparagraph 1, I believe. It may not be in that particular provision, but it is in Wigmore there. I can find it.

Wigmore points out that it is not the purpose of 101 this privilege to protect something that does not exist, and as counsel know, the facts do not indicate there is any home life between this witness and either one of these two defendants with whom she has gone through a marriage ceremony.

I submit, therefore, that the reason, good common sense reason, and the decisions, such as in the Mitchell case, justify this court's ruling to permit, in the seeking of truth as to the facts in this case, the testimony of this

witness whom the Government now has on the stand.
 102. By Mr. Weissbourd: Counsel fails to distinguish between incompetence and privilege against confidential communications. The question of competency is not affected by subsequent separation. Only divorce may cut that off. As to the witness here, that is the question that is in issue before the jury.

As to the other cases, your Honor, the Mitchell case, upon which counsel relies, arose in the Second Circuit and falls within the well recognized exception to that rule, that where the case is about an injury committed upon the wife, then the wife may testify as to her husband who has committed the injury. This is not new in the law in those particular cases. It was extended to cover white slavery, which is an injury to character, morality, although perhaps not a physical injury.

The Walker case was also in the Second Circuit, decided after the Mitchell case, and this distinction is so well known that the Court in the Walker case did not even mention the Mitchell case.

One other Circuit has decided the same question
 103 tion the same way, and I believe the Appellate Court for the District of Columbia, the Third Circuit, in the Paul case, decided that the wife's testimony, despite the Funk case, is not admissible against the husband or against his co-conspirators or alleged co-conspirators.

By Mr. Downing: If your Honor please, I am not so sure that this is not a crime against the person who is offered as a witness. Furthermore, there is a technical point here, just a technical point, that these people making this motion are not the proper persons to seek to claim this privilege. They are representing Leopold Knoll, who, I don't think—maybe he has been married to her, too—they are not the ones to seek this privilege. They are out of order in claiming this privilege. If the person that claims he is married to her will stand up, then the Court is properly considering it. But these people don't represent Munio Knoll or Marcel Lutwak.

By Mr. Eben: If counsel had listened to what my associate said, he would know the law is that the testimony
 of a wife is not only not admissible against the hus-
 104 band but it is not admissible against any of his co-
 conspirators or alleged co-conspirators, and there

is an abundance of cases on that. Mr. Weissbourd mentioned two of them. Therefore, since such testimony is not admissible against any such co-conspirators, we are clearly within our rights in making the objection.

By Mr. Weissbourd: It is not a privilege we are claiming.

By The Court: I cannot see the reason for the rule which would make it incompetent against co-conspirators.

By Mr. Eben: By permitting her to testify against co-conspirators, she would in effect be testifying against her husband, establishing some part of the conspiracy in which her husband is allegedly involved. That would be the basis for the rule.

By Mr. Downing: May I make the objection that there is now going on a proceeding called United States vs. one Remington. I don't know his first name. Although there has been a divorce recently, his wife has testified. That is in the Second Circuit, where counsel says the rule 105 is so ironclad, that she cannot testify, and she has recently testified against her husband, although there has been a divorce.

By Mr. Eben: Certainly. The distinction is that there has been a divorce, and the only matters concerning which a divorced wife is barred from testifying against her former husband are those matters which are privileged. But where there is still a marriage, she is competent to testify as to anything, including matters during courtship or before that.

By Mr. Downing: Are they saying that this witness is still married to the defendant Munio Knoll?

By The Court: That is what they say.

By Mr. Weissbourd: That is what the Government says.

By Mr. Downing: No, no, no. You are the one that is making the motion.

By Mr. Eben: We have asked for a voir dire with respect to it. We would like to find out.

By Mr. Downing: I submit further, your Honor, that this testimony is not about any confidential communications. It is merely a seeking of facts, as to facts that took place, all of which are matters of public record, and there is no sanctity of the home here to protect either.

By Mr. Gerber. May I be permitted, for the purpose of the record, in order to preserve the rights of my client, to make a statement at this time?

By the Court: Yes.

By Mr. Gerber: My statement is this: I am not a party to the objection now being made. That is, my client is not a party to the objection being made. But because of certain clarity in the record, that will be necessary for me to make after this objection is over, and which I don't want to interrupt the record for at this time, I think the objection that is being made is addressed to two propositions: First, the proposition of law, asking for a ruling from the Court as to whether a wife may testify against her husband, assuming she is a wife and he is the husband. The second portion of the objection being made, after the Court rules, and if he should rule that a wife as such cannot testify against the husband, then the Court will be asked, I presume, to hear evidence as to whether or not the situation here comes within the purview of that ruling.

At that time I would like to make a statement for the record on behalf of my client.

By Mr. Downing: That statement is something like, "We want to have the benefit of this ruling if you rule in favor of us, but we don't want to make the motion."

By Mr. Gerber: No. I think it is perfectly proper for counsel to ask a ruling as to whether or not as a general proposition of law a wife may testify against a husband in a criminal case. It understand counsel is making an objection, and I do not join in it, and they ask for the Court to rule on that proposition of law, and then they will proceed further to inquire as to whether that law applies here to the facts. I am not taking any position until the factual set-up is gone into. I am not taking any position.

By Mr. Downing: Then the record shows, your Honor, so far, neither one of the defendants who have been married to this person is claiming that she is their wife, and they are claiming the privilege. Here are some people concerned with other defendants that are claiming the privilege.

108 By Mr. Gerber: Your Honor is concerned with a proposition of law, and counsel for the Government persists in inserting a question of fact. I think the proposition of law should be resolved first, before there is any necessity of going into the facts.

By the Court: Well, we do not have much time left.

Has it been established on the record that this woman was ever married to anybody?

By Mr. Downing: Not to date, not in this court room it has not been.

By the Court: I guess we had better find out about that tomorrow first.

By Mr. Downing: I further think that if the defendant— I believe regardless of what the court's decision is that it certainly is competent against persons to whom she has never been married—I think the person who says she is married to him ought to stand up and make the motion so that we will know who claims the privilege.

By Mr. Eben: I would like to read four lines from 109 this case of, U. S. v. Liddy, 2 F 2d 261, in which the court says:

“Under the common law which governs the evidence in criminal trials in federal courts the wife of one of several defendants on trial at the same time cannot be called as a witness against any of them,”

Citing three or four cases.

That rule has a very logical basis, because if a wife of one of two co-conspirators were permitted to testify not against her husband but against the co-conspirator she would still be testifying against her husband because the acts and declarations—

By the Court: You gentlemen can just make up your minds that counsel for—

By Mr. Eben: Leopold.

By the Court: Who is this woman said to have been married to?

By Mr. Downing: Munio Knoll and Marcel Max Lutwak.

By the Court: Which one was she married to first?

By Mr. Gerber: Munio Knoll, my client.

110 By the Court: If your objection is to be sustained you will make it, sir. I am addressing you, Mr. Gerber.

By Mr. Gerber: I am not seeking the sustaining of it.

By the Court: Then we are just wasting our time. If you don't make it it will never be sustained.

By Mr. Gerber: I am not a party to it.

By the Court: You gentlemen do not have any standing to make it unless counsel for Munio Knoll makes it.

By Mr. Eben: I should like to say respectfully, on the record, that I differ with your Honor's ruling.

By the Court: Save your record. If Munio Knoll does not say, "This is my wife and I don't want her to testify," she is competent. That will be the ruling.

By Mr. Gerber: So far as Munio Knoll is concerned, it is the theory of his defense that she is not his wife, and that the divorce they obtained was a legal divorce, they consider it a valid divorce. That is the theory of 111 our defense, and that is why I don't seek to take advantage of the objection.

By the Court: I am not quarreling with you.

By Mr. Gerber: I want to make my position clear so that my rights will be preserved.

By Mr. Downing: I think that resolves this question.

By the Court: I think so, too.

By Mr. Downing: May we then be permitted to continue her examination tomorrow?

By the Court: Yes.

Ask the young lady to come in.

By Mr. Bartoline: I represent Lutwak, who we contend married her in 1947. I would like to know what my position is then, because of the effect of the ruling here that she is still married to Munio Knoll, or the implication that she is—

By the Court: I am not ruling she is.

By Mr. Bartoline: All right. Thank you.

By the Court: Madam, you will return here at ten 112 o'clock tomorrow morning. In the meantime do not talk about this case with anyone.

Bring in the jury.

(Whereupon the following proceedings were had in the presence and hearing of the jury:)

By the Court: We will recess at this time, Ladies and Gentlemen, until ten o'clock tomorrow morning.

Bear in mind what I said to you about discussing this case with anyone. Do not discuss it with anyone. Do not permit anyone to discuss it with you. If anyone attempts to communicate with you about the case report that fact at once to the court.

Do not discuss the case amongst yourselves until finally it is submitted to you for decision at the end of the case.

You may go until ten o'clock tomorrow morning.

(Thereupon the further trial of the above-entitled case was adjourned until 10 o'clock a. m. of the following day, Tuesday, January 9, 1951.)

113

(Caption—No. 50 CR 464)

Chicago, Illinois
January 9, 1951,
10:00 o'clock a. m.

Met pursuant to adjournment.

Present:

Mr. Downing
Mr. Owen
Mr. Gerber
Mr. Bartoline
Mr. Sokol
Mr. Eben
Mr. Watt
Mr. Weissbourd

And thereupon the following proceedings were had here-
in out of the presence and hearing of the jury:—

By Mr. Eben: May I address the court before the jury
is brought in?

By the Court: Yes.

By Mr. Eben: May it please the Court, there came to
my attention this morning an article which appeared
114 in the Sun-Times on page 6 of this morning's edition,
and in that paper, they described somewhat what had
transpired here yesterday. Unlike the rule which governs
in the English cases wherein newspapers are permitted only
to repeat precisely what the testimony is, this newspaper
went beyond that.

There are matters which appeared in it which were not
mentioned in the evidence nor in the District Attorney's
opening statement.

Furthermore, and this is the real vice of this article,
your Honor, coupled in this article is a statement as to the
disposition which your Honor made of a case or a number
of cases yesterday.

Those cases were of the same nature as the case here.
The description of what transpired in those other cases
follows immediately after the description of what happened
here, and I will read it, very briefly. It is only three or
four paragraphs, your Honor.

After describing this particular case, the article then goes on to say:

"'A kissless bride' and two men were sentenced by Barnes—"

I presume that means Judge Barnes, of course.

115 "—in a similar case immediately before the other four went on trial.

"He ordered prison terms of a year and a day each for Thomas M. Donahue, 31, of 6547 South Minerva, a laundry truck driver, and Joseph Chiaro, 48, of 2248 Blue Island, a factory worker.

"He suspended a like sentence for Mrs. Italia Maria Buccioni Chiaro, 36, after she agreed to consent to deportation to Italy.

"The three pleaded guilty to conspiracy to break the immigration laws through the marriage-for-citizenship of Italia Maria, the sister of Donahue's war bride, and Chiaro."

I call to your Honor's attention I am not making any motion for a mistrial. We are not in a position to make any such motion because obviously it would be impossible for us to find out whether or not this jury has read this article.

We do think, however, it seriously prejudices our case, and I therefore ask your Honor, as a matter of substantial justice, to interrogate the jury this morning, as soon as 116 they come into the box, and inquire of them whether or not they have read this article, and if they have read the article, whether or not there is any prejudice that has arisen in connection with this case.

Therefore, I think your Honor should tell the jury that they ought not to read these articles; that nothing in them is evidence in this case, and they should be governed only by what they hear from the stand.

By the Court: Any other motions?

By Mr. Eben: That is all we have, your Honor.

By Mr. Gerber: That is the same motion I have. I would like to make a statement for the record aside from this motion.

By the Court: On what?

By Mr. Gerber: On another proposition.

By the Court: Anybody anything else to say about this same proposition?

By Mr. Gerber: No, but I concur in it, your Honor. I concur in the spirit of his motion.

By Mr. Eben: Mr. Bartolue points out to me in this article also it is said that, and I now quote from the article:

"Downing charged that both Miss Osborn and Miss Klemtner were paid \$1,700 by Munio Knoll, once a wealthy European distiller, to go through with the marriages."

That was not adduced here yesterday. There was no statement by Mr. Downing to that effect to the jury.

By Mr. Downing: Nor has there ever been any statement by Mr. Downing to that effect in the record.

By the Court: Now, you have all made the motions you desire to make on this matter?

By Mr. Gerber: On this matter I can only say this. I think in all fairness, no harm can certainly come to the Government's case by virtue of a ruling to keep the defendants in a cloak of innocence that they are entitled to until the evidence proves them guilty.

In that spirit, I think the jury ought to be admonished, and it should be ascertained whether they have read it, and whether it would have any effect on their deliberations.

118 By the Court: So far as I am able to observe, those of you who are sitting around this table, looking after the interests of these defendants, are not unfamiliar with the trial of criminal cases in this city. In fact, I think some of you have had vast experience.

You, I think, every one of you, know better than I do what is likely to transpire during the trial of a criminal case. Had any one of you made any request of the Court to instruct this jury not to read the newspapers yesterday, such a request would have been complied with.

I understand now the request is made. Is there a request now made to instruct the jury not to read the newspapers?

By Mr. Eben: Yes, there is.

By the Court: That request will be complied with. Your request that I interrogate the jurors will not be complied with.

The idea that people who come into a jury box leave their common sense—they check it some place down in the street, and come up in the jury box just wholly devoid of common sense, I do not think that exists any place except in the minds of the lawyers defending defendants.

119 These people are sensible people. They promised to

try this case on the evidence produced here in open court. I am sure they are going to try to do it. Had any one of you asked me to ask them not to read the newspapers, I would have done so. I am not going to interrogate them. Bring in the jury.

By Mr. Gerber: Your Honor, I have a statement before the jury is brought out.

By the Court: About what?

By Mr. Gerber: In connection with what happened yesterday afternoon. I would like to make a statement for the jury.

By the Court: All right, go ahead.

By Mr. Gerber: If your Honor please, I have been caught in quite a quandary in this case since the inception of the argument.

By the Court: What are you going to do? Do you want to object to this lady's testimony?

By Mr. Gerber: No, I am not here for that purpose, your Honor. I am here to establish the record as to my position.

By the Court: All you have to do is to sit quiet.

120 By Mr. Gerber: May I say this, your Honor?

By the Court: All you need to do is to say nothing. You do not need to talk. If you want to object on behalf of your client to the witness on the stand testifying, do so. Otherwise, all you have to do is remain quiet.

By Mr. Gerber: Your Honor, I am only trying to call your Honor's attention to the fact in this case which is destroying the ability of myself to represent my client, consistently in this case, and that is this, that the Government, by the manner in which this case is being put on, unless the record is set clear, your Honor, has prevented me from adequately preparing my defense of this case.

By the Court: Oh, I don't know.

By Mr. Gerber: I would like to explain why, if the Court please. Now, the Government is charging us with carrying water on both shoulders.

By the Court: You know how to prepare cases. Let us not waste time.

By Mr. Gerber: Your Honor, I want to be able to meet what the Government is putting in. I cannot possibly do it in the present status of this case.

By the Court: You can ask for a bill of particulars.
121 you know.

By Mr. Gerber: Your Honor, I got into this case three days before it began. Even if I had gotten into it before, your Honor, where the Government is putting a witness on the stand, your Honor, and at the same time there is going to be another woman put on the stand whom we contend is the valid wife of the defendant, I think the Government—

By the Court: The Government is not taking care of the morals of your defendants. Up to the time of this indictment, prior to that, so far as the Government was concerned, the world was before him. He could do as he pleased. What he did, he did. Bring in the jury. I do not want to waste time. You are just wasting time.

By Mr. Gerber: If your Honor understood my position, I am sure you would consider it a serious position. You haven't given me a chance to explain it to you.

By the Court: Can't you do it in a word?

By Mr. Gerber: They are about to put on a woman. They are going to put her on, on the theory she hasn't a valid divorce from my client. Then when they put on his present wife, if I object to the competency of the testimony 122 of his wife, then they are going to say—

By the Court: Oh, objection overruled.

By Mr. Gerber: Exception.

By Mr. Eben: May I have this article marked Defendants' Exhibit 1, your Honor?

By the Court: Yes.

(The document referred to was marked for identification Defendants' Exhibit 1.)

By the Court: All right, bring in the jury.

123 (The following proceedings were had in the presence and hearing of the jury:—)

By the Court: Ladies and Gentlemen, good morning.

We are engaged in an important enterprise, the trial of a case as to whether or not certain defendants have violated the laws of the United States.

That is an important thing, and it is an important function which you are to perform as jurors in this case.

I know that each and every one of you wants to do a good job. I know you want to follow the law. I know you want to be just to the Government on the one hand and to the defendants on the other.

I know that in the future time, you will look back over your life, and you will remember the fact that you were a

juror in this case, and you want to think you were a good jury man or a good jury woman.

You should listen carefully to the evidence produced 124 in open court, and listen to the judge's instructions with reference to the law, and you use the best judgment you have of the facts produced in open court, and the law as the court gives it to you. I know you will want to feel that way about it.

Now, so that you will feel that way at any time hereafter, I am going to suggest that you do not read the newspapers during the trial of this case.

If you do not read the newspapers, you won't have any difficulty in sifting out what you hear in open court from what you read elsewhere.

Just refrain from reading the newspapers. It will be worth your while. You will be glad you did. So that you will know how to decide this case on the evidence produced in open court and not on anything else, do not read the newspapers. If you have read the newspapers since we have started this case or at any time—yesterday you told me you had never heard of the case—but if yesterday, or 125 this morning, you read anything in the newspapers, get it out of your mind and forget it, and take only what is produced here in open court and in the future, I urge you and direct you not to read the newspapers until this case is over, and you will be glad if you follow that advice. Just from your own viewpoint, you will be glad, because you will want to do a good job.

The defendants are entitled to have you refrain from reading anything about this case, so just follow my direction and refrain from reading anything.

Proceed, Gentlemen.

MARIA LUTWAK, a witness heretofore called on behalf of the Government, and having been heretofore first duly sworn, resumed the stand and further testified as follows:

Direct Examination by Mr. Downing (Ctd.)

Q. What is your name, please?

A. Mrs. Maria Lutwak.

Q. You are the same witness who testified yesterday afternoon?

A. Yes, sir.

126 Q: Your first name, you are also known by the name of Mania?

A. That is just an abbreviation of the name Maria.

Q. That is spelled M-a-n-i-a?

A. That is right.

Q. You are acquainted with the defendant, Munio Knoll, and Leopold Knoll, Marcel M. Lutwak, and Regina Treitler?

A. Yes, sir.

Q. Do you see them in the court room?

A. Yes, sir.

By Mr. Downing: May we have for the record that the witness has seen and can identify the defendants in the court room?

By the Court: How is that?

By Mr. Downing: May the record show that the witness has seen and can identify the defendants in the court room?

By the Court: The record may show that she has seen the defendants and she has indicated that she does identify them.

By Mr. Downing: Thank you.

By Mr. Downing:

Q. With respect to the defendant Manio Knoll, to 127 your knowledge, has he used any other name besides that name?

● A. Yes.

● Q. What was the other name?

A. The name of Romankiewicz.

Q. What was his first name?

A. Zygmunt.

Q. When did he commence using that name, Madam?

A. During the persecution, the Nazi persecution in Hungary.

Q. What year was that that he changed the name to Zygmunt Romankiewicz as best you recall?

A. 1942, 1944.

Q. 1942?

A. First in the year 1943.

Q. The latter part of 1942 and the early part of 1943?

A. Yes.

Q. Now, have you been married?

A. Yes.

Q. When and where were you married first?

A. I was married first in 1932.

Q. What time of the year, do you recall?

A. December.

128 Q. Where were you married?

A. In Poland.

Q. To whom were you married?

A. To Munio Knoll.

Q. Have you thereafter lived with Munio Knoll as man and wife in Poland?

A. Yes.

Q. Thereafter, going on some years, were you married?

A. Yes.

Q. To whom were you married?

A. To Marcel Lutwak.

Q. That is the defendant, Marcel Lutwak, here in the court room, that you see here in the court room?

A. Yes.

Q. Where were you married to him?

A. In France.

Q. Was that in Paris, France?

A. In Paris, France.

Q. As best you recall, approximately what was the date of that marriage ceremony?

A. August, 1947.

Q. Now, was the marriage performed by civil authorities in Paris?

A. Yes.

129 Q. Who was present at the time when the marriage ceremony took place?

A. A cousin, Charlotte. I cannot recall the name.

Q. You do not recall her last name?

A. No, Charlotte and Munio Knoll.

Q. Were just those two people present with you and Marcel Lutwak at that time, that is at the time you were married?

A. Yes.

Q. Now, approximately when did you first meet Marcel Lutwak?

A. It was the end of July or the beginning of August in 1947 in Paris.

130 Q. And it was in Paris that you met him?

A. Yes.

- Q. Who introduced you to Marcel Lutwak?
- A. I guess his uncle in Paris, Bernard Wireberg.
- Q. Bernard Wireberg?
- A. And his uncle, Munio Knoll.
- Q. Munio Knoll?
- A. And Poldi, Charlotte.
- Q. By Poldi, whom do you mean?
- A. I mean Leopold Knoll.
- Q. That is the defendant Leopold Knoll here in the court room?
- A. Yes.
- Q. Your answer to that is "Yes"?
- A. Yes.
- Q. If you know, while Marcel Lutwak was in Paris, where did he live, that is, prior to the time of your marriage to him?
- A. In the Hotel le Khedive.
- Q. Where were you living at the time?
- A. In the same hotel.
- Q. If you know, prior to the marriage ceremony with Marcel Lutwak, with whom was he living at the time in the le Khedive Hotel?
- A. He was staying in the hotel, for several times—
131 for a short time he stayed with his uncle, Bernard Wireberg, and he stayed in the same hotel, in the le Khedive.
- Q. Was Bernard Wireberg staying at that hotel at that time?
- A. No, he had his own apartment.
- Q. In whose room did Marcel Lutwak stay?
- A. In the very beginning, I guess with his uncle.
- Q. Which uncle was that?
- A. Munio Knoll.
- Q. Munio Knoll. At that same time or during that same period of time, was the defendant Leopold Knoll residing at that hotel?
- A. Yes.
- Q. To your knowledge, what is the relationship between defendants Marcel Lutwak and Munio Knoll?
- A. Munio Knoll is an uncle of Marcel.
- Q. To your knowledge, what is the relationship between the defendants Munio Knoll, Leopold Knoll and Regina Treitler?
- A. They are brother and sister.

Q. With respect to the marriage ceremony with Marcel Lutwak, did you receive a wedding ring from Marcel Lutwak at that time?

132. A. Not at that time because we—

By Mr. Eben: I object to that as immaterial.

By the Court: Overruled.

By the Witness: We planned to have our wedding in the United States, a religious ceremony, where I was to receive the ring.

By Mr. Downing:

Q. Did you ever have any religious ceremony in the United States?

A. No.

Q. Did you ever receive a wedding ring from Marcel Lutwak up to this date?

A. No.

By Mr. Eben: The same objection, your Honor.

By the Court: Overruled.

By Mr. Downing:

Q. What date did you first come to the United States?

A. September 9, 1947.

Q. At what port did you enter the United States?

A. In New York.

Q. New York?

A. Yes.

Q. Did you come to the United States by boat or airplane?

A. We came by boat.

133. Q. What was the name of the boat, if you recall?

A. Queen Mary.

Q. Queen Mary?

A. Yes.

Q. With whom did you come to the United States?

A. With my husband, Marcel.

Q. Did you enter the United States as a bride of a United States service man?

A. Yes. I came with my husband.

Q. Directing your attention to a document which has been identified as Government's Exhibit 1 for identification, I ask you to look at that and state if you have ever seen that document before?

A. I see my signature on it.

Q. By your signature, are you referring to the signature above the line "Signature of alien"?

A. Yes.

Q. When was your signature placed on this document, Government's Exhibit 1 for identification?

A. On the date of entering, arriving in, the date of our arrival in New York.

Q. That was on September 9, 1947, which is the date stamped on this document, is that right?

A. Yes.

134. Q. With respect to the inked printing and writing above your signature, by whom was that placed on this document?

A. My husband Marcel. I didn't speak English yet at that time.

Q. And that was placed on there by Marcel, in your presence, is that right?

A. Yes.

Q. And where was your signature and the writing of Marcel Lutwak placed on this document, Government's Exhibit 1 for identification?

A. I didn't understand. I didn't get your question.

Q. Whereabouts did you, in what town did you place your signature and where did Marcel place his writing on this paper?

A. I guess we filled it out on the boat.

Q. On the boat, and then did you use this document at the time you came into the United States, at the port of entry, as you recall?

A. On the date and hour of arrival—

Q. Yes.

A. —we had to fill this—

Q. To fill this out?

A. To fill this application out.

135. Q. With respect to the time that you entered the United States on this date were you and Marcel questioned by an immigrant inspector in New York, that is, a person in the Immigration Department?

A. On the boat or in New York?

Q. Either after the boat docked or when you got off the boat?

A. After we got off of the boat we went to the—I went a few days later to the immigration office and they took finger prints.

By Mr. Bartoline: I can't hear the answers.

By the Court: Speak a little louder.

By the Witness:

A. A few days after our arrival in Chicago we went to the immigration office and they took finger prints of me there.

By Mr. Downing:

Q. That was at the time you registered as an alien after you had arrived in the United States?

A. I guess yes.

Q. After you signed this document which I have shown you here and it was filled out, were you then admitted into the United States there at the port in New York?

136 A. Yes. I am here.

By the Court: What did you say?

By Mr. Downing: "Yes."

By the Witness: I surely—I don't know, your Honor, if it was a consequence of filling out this particular application, but I was permitted to come into United States.

By Mr. Downing:

Q. You came into the United States after you had filled in this document, is that right, or signed this document?

A. I couldn't say strictly, it was after signing. I know we filled it out on the boat and I don't know if it was a consequence of filling out this particular paper.

By the Court: Counsel is not asking you about consequence. He is just asking about time.

If that answer is important to you you can pursue that.

By Mr. Downing:

Q. Your best recollection is that you signed this on the date that this document bears?

A. That is right.

137 Q. And that date which the document bears is the same date you arrived in the United States?

A. September 9.

Q. That was the date you entered the United States?

A. Yes.

Q. After you entered the United States at New York where did you go?

A. To Chicago.

Q. And what date did you arrive in Chicago?

A. Tenth, I imagine.

Q. Tenth of September?

A. Yes.

Q. That was the next day after you entered?

A. Yes.

Q. Where did you first reside after coming to Chicago?

A. When we arrived to Chicago I resided at Mrs. Treitler's house.

Q. If you know is that address 35 South Central Park in Chicago?

A. As far as I remember, yes.

Q. At that time did Marcel Lutwak live at Mrs. Treitler's?

A. No.

138 Q. How long did you live there at Mrs. Treitler's at that time?

A. For about five weeks.

Q. And then where did you go to live?

A. I went to Mrs. Sager's house.

Q. Is that Mrs. Rose Sager?

A. Yes.

Q. If you recall, was her address at 3532 West Adams Street in Chicago?

A. Yes.

Q. How long did you live at Mrs. Sager's house? Approximately how long?

A. Two or three weeks maybe. Mrs. Sager went for an operation to the hospital.

Q. After you left Mrs. Sager's then where did you next live?

A. I went back to Mrs. Treitler's house.

Q. And how long did you live at Mrs. Treitler's house the second time, approximately how long as best you recall?

A. About six weeks, as best I recall now.

Q. That is about as best you recall, is six weeks?

A. Yes.

Q. At that time was Marcel Lutwak living at that address, that is, at Mrs. Treitler's?

A. No.

Q. At that time, or any part of the time that you were living at Mrs. Treitler's the second time, did Munio Knoll live at Mrs. Treitler's?

A. I lived in the same house, as the middle of November—

Q. The middle of November?

A. Yes.

Q. And this is still in 1947, is it?

A. Yes.

Q. That is the year you came in?

A. Yes.

Q. And thereafter after living at Mrs. Treitler's the second time where did you go to live?

A. To an apartment on West Maypole.

Q. Is that address 3545 West Maypole, here in Chicago?

A. It is Maypole Street.

Q. How long did you live at that address?

A. For about four weeks, or five weeks.

Q. And then approximately what month was it that you left that address?

A. February.

Q. February of 1948?

140 A. Yes.

Q. At that time did Munio Knoll also live in that same address, that is, on Maypole Street?

A. Yes.

Q. And after you left that address in February of 1948 where did you go to live?

A. To New York.

By Mr. Eben: I think I will interpose an objection at this stage to all the testimony and all of the questions relative to what has transpired after her entry into this country, on the grounds that the conspiracy if any terminated at the time that she did enter the country, that there has been no showing here, like in the Rubenstein case, of any agreement beforehand, and that any acts occurring after the alleged conspiracy came to an end are immaterial in this particular case, and I direct my objections specifically to the questions just asked, and I also make a motion to ask your Honor to strike all of the testimony that this witness has given relative to what transpired after she came into the country.

141 By Mr. Downing: We plead a continuing conspiracy, and we also indicate an overt act in 1950.

Irrespective, it is still admissible, I submit, on the basis that it is testimony about the activities of these individuals during this period of time that is charged there in the indictment.

By the Court: Objection overruled.

By Mr. Bartoline: I object on behalf of Marcel Lutwak because there has been a marriage performed in France here, and I object to the competency of this witness to testify and further with reference to any further details of that marriage.

By the Court: Objection overruled.

By Mr. Downing:

Q. In February of 1948, where did you go?

A. I went to New York.

By Mr. Eben: For the purpose of the record, rather than take up the time of the court, may the record show my continuing objection to this testimony, that is, any testimony that relates to events occurring after the date 142 of entry?

By the Court: Yes. If you want to put it in—Read the next to the last paragraph.

By Mr. Eben: I do want to put it in.

By the Court: All right, you may.

By Mr. Eben: Will that also pertain to other counsel?

By Mr. Bartoline: Yes.

By Mr. Gerber: We would also like to adopt the same objections on the grounds as stated.

By the Court: Yes.

By Mr. Downing: Read the last question.

(The last question and answer were read by the reporter.)

By the Court: You object to anything after the entry, is that it?

By Mr. Eben: Yes. I will clarify my objection for your Honor.

By Mr. Downing: If your Honor please, I don't know whether all these arguments here are proper before the jury. I think—

By the Court: Oh, the jury are sensible people.

143 By Mr. Eben: We contend that the alleged conspiracy, under the Rubenstein case, came to an end at the time of the entry of any of the defendants into the country. The Rubenstein case is quite clear on it.

By the Court: On page 4 of the indictment it says:

"It is a further part of said conspiracy that the said defendants would at all times subsequent to the formation of said conspiracy conceal such transactions and acts aforesaid and would do such further and

different acts as they might deem necessary and expedient to prevent their disclosure to the United States Immigration and Naturalization Service of the existence of said conspiracy."

By Mr. Eben: I am completely aware of that, but such allegation is in complete violation of what the Supreme Court said in *Krolich v. United States*.

By the Court: No, I don't think so. Objection overruled.

By Mr. Eben: I would like to state my objection 144 for the record. That would do away with any statute of limitations. Mr. Justice Jackson specifically held—

By Mr. Downing: Of course, that was in dictum.

By the Court: Objection overruled.

By Mr. Eben: I want to put it on the record.

By Mr. Downing: What was the last question?

(The last question and answer were read by the reporter.)

By Mr. Downing:

Q. How did you go to New York from Chicago at that time?

A. By train.

Q. Do you recall who took you to the train at that time?

By Mr. Gerber: I object. It presumes somebody did take her. He is leading.

By Mr. Downing: Strike it.

By Mr. Downing:

Q. Did anyone go with you to the train at the time you went to the depot here in Chicago to go to New York?

145 A. A man by the name of Ludmer.

Q. Is that Joseph Ludmer?

A. I can't recall his first name.

Q. If you know, is he from New York?

A. I am not sure, but he was—he is a relative of the family, and—

Q. By that you mean he is a relative of Munio Knoll and Regina Treitler?

A. Yes.

Q. How long did you remain in New York approximately?

A. To June.

Q. Until June of 1948?

A. Yes.

Q. During that period of time in 1948 that you were in New York did Marcel Lutwak reside with you in New York?

A. No.

Q. And then after June of 1948 where did you go to live?

A. I went back to Chicago.

Q. And where did you then reside in Chicago?

A. I came back to Chicago for the purpose, to see my husband.

146 Q. And where did you reside in Chicago? Just answer the question.

A. Oh, on Maypole Street.

Q. That is the same address?

A. Yes.

Q. That you had resided at just prior to the time you went to New York, is that right?

A. Yes.

Q. Your answer was, "Yes," to that, was it?

A. Yes.

Q. And then how long did you reside at that address on Maypole Street, approximately how long?

A. Five months, or six, until November.

Q. Until November of 1948?

A. Yes.

Q. During that period of time did Munio Knoll reside at that same address?

A. Yes. It was his apartment.

Q. And did defendant Marcel Lutwak reside at that address during that period of time, that is, at 3545 West Maypole?

A. No, not at that time.

Q. And then where did you go to live in November of 1948?

147 A. I went back to New York.

Q. Have you lived in New York City since that time?

A. Yes.

Q. During that period of time, this last time that you have been residing in New York, has Marcel Lutwak resided with you in New York?

A. No.

Q. Since you have been here in the United States to

your knowledge has Marcel Lutwak obtained a divorce from you?

A. Yes.

Q. And about when was that, as best you recall?

A. About in April, the end of April.

Q. Was that last year, 1950?

A. Yes.

By Mr. Downing: That is all. They may cross examine.

By Mr. Bartoline: I again renew my motion, if your Honor please, to strike everything out of the record, the testimony of anything that took place, as to the competency of this witness, from August, 1947, after the marriage to my client, Marcel Lutwak, to the date of 148 the divorce in 1950.

By the Court: Motion denied.

Cross Examination by Mr. Gerber.

Q. Maria Lutwak, where were you born?

A. In Poland.

Q. How old are you, please?

A. I was born September 2, 1914.

Q. September 9?

A. 1914.

Q. 1914. Would you please keep your voice up so all the jurors and everybody can hear you?

A. Yes.

Q. Because it is hard to hear. In what town were you born in Poland?

A. Stanislawow.

Q. What is that?

A. Stanislawow.

Q. Stanislawow?

A. Yes.

Q. Did you live there all of your life up until 1942?

A. No.

149 Q. You went from there to another town in Poland?

A. Yes.

Q. What town did you go to?

A. When I was married?

Q. Yes.

A. I was living in a small—in a village or small town.

Q. Did it have a name?

A. Yes, Yashin.

Q. Was it there that you met Munio Knoll, your first husband?

A. I was married to Munio Knoll when living there.

Q. Did you meet him there for the first time?

A. No.

Q. Did you meet him in Stanislawow?

A. No, Nadvorna.

Q. Another town in Poland—

A. Yes.

Q. Where you were both living at the time that you met?

A. No.

Q. At any rate, you did go to live in this small village, the name of which you just gave us and which I cannot pronounce, is that right?

150 A. Yes.

Q. Was Munio living in that village too at the time you were married?

A. He was living—I was married to him and I went to live in the place where he was living. It was his home town.

Q. He brought you to that town, which was his home town, is that right?

A. It was his home town.

Q. You were married by a rabbi there?

A. Yes.

Q. There was no requirement, if you know, would you tell us whether or not there was a requirement in Poland of the law that you had to get married by court or civil marriage license—

By Mr. Downing: Objection.

By Mr. Gerber: This is very important.

By Mr. Downing: I object to the requirement.

By Mr. Gerber: That is what I tried to explain to the court before the jury came in. I knew I was going to run into this.

By Mr. Downing: You made your statement. Now can I make mine?

151 I don't know that this witness has been qualified to testify as to her knowledge of the law in Poland or any other country, and—

By the Court: Sustained.

By Mr. Gerber:

Q. You were married by a rabbi, you said?

A. We were married by a rabbi in my cousin's house, strictly religious ceremony, in Stanislawow.

Q. Was a marriage license taken out with the Government of Poland or with the county before a rabbi, before the wedding?

A. I don't think so, because it was in a private house, strictly religious. My father was a very religious man, and this was the most important thing to him.

Q. As far as you know, however, there was no marriage license taken out from any civil authority at the time you were married by the rabbi, is that correct?

A. Yes.

Q. As far as you know?

A. Yes.

Q. After that rabbinical marriage you proceeded 152 to live in that town with your husband until 1942?

A. No. Until 1941.

Q. 1941?

A. Yes.

Q. Did you and your husband leave that town in 1941?

A. Yes.

Q. Will you tell us the circumstances under which you left?

By Mr. Downing: Objection, your Honor. I think that is going beyond the scope of the direct examination. If they want to bring out any other evidence they can call this witness at the proper time for such direct testimony as they seek. I think it is way beyond the scope of the direct examination.

By Mr. Gerber: The District Attorney has accomplished his purpose with the witness. I think by virtue of the line of his examination I have the right to lead up and through her coming, through these routines of marriage and until she got into this country. I have a right to follow the trail that he has opened. I think it is only fair to the 153 defense that we be given the latitude to do it.

By Mr. Downing: This phase was not even covered.

By the Court: Objection sustained. You just stay within the direct, and if you want to put on any further evidence when your turn comes, and if it is competent, relevant and material, you can.

By Mr. Gerber:

Q. When you left this town in Poland in which you lived, did you leave with your husband Munio Knoll?

By Mr. Downing: Objection your Honor.

By the Court: Sustained.

By Mr. Gerber:

Q. To what place did you go after you left this town in which you were married?

By Mr. Downing: Objection, your Honor.

By the Court: Sustained.

By Mr. Gerber:

Q. Did you subsequent to that marriage obtain a divorce from your husband?

By Mr. Downing: Objection. Again, I did not go into that.

154 By Mr. Sokol: He mentioned it in his opening statement, and he is denying us the right to ask about it.

By Mr. Gerber: And on the argument that—

By Mr. Downing: We are talking about the matter of covering on cross examination what was covered on direct examination.

By the Court: Sustained. Stay within the direct.

By Mr. Sokol: In the opening statement by Mr. Downing—

By the Court: You will just stay within the direct of the witness.

By Mr. Gerber:

Q. You have stated on direct examination, Maria, that Munio Knoll changed his name to Zygmunt Romankiewicz, is that correct?

A. Yes.

Q. You did state that on direct examination. Did you state the reasons why he did it?

By Mr. Downing: Objection, your Honor.

By the Court: Sustained.

By Mr. Gerber: He asked her that question on direct.

155 By the Court: Of course he did.

By Mr. Gerber: Why can't I go into it on cross examination?

By the Court: Because he didn't go into it.

By Mr. Gerber: If your Honor please, may I make this statement—

By the Court: Well now—

By Mr. Gerber: He has brought out that the man changed his name. I want to show why, for the elucidation of the jury.

By the Court: You have emphasized it now on cross examination. Go ahead and stay within the direct.

By Mr. Gerber: Is it outside the direct to ask her the purpose for which he changed his name?

By Mr. Downing: The best witness—

By the Court: Yes. I have ruled that way.

By Mr. Gerber: All right.

By Mr. Gerber:

Q. You are now in Paris in 1947. You met Marcel Lutwak there?

156 A. After a very horrible, having a very horrible time—

By Mr. Downing: Just a minute.

157 By Mr. Gerber:

Q. Did you meet him there? Yes or no.

A. Yes.

Q. You were introduced to him by your husband, Munio Knoll, or your former husband, Munio Knoll, and other relatives, is that correct?

A. Yes.

Q. And this hotel that you were staying at in Paris, called the—what was that name?

A. Le Khedive.

Q. Did that hotel have a reputation as being a hotel where refugees coming into Paris resided?

A. Yes.

By Mr. Downing: Objection. I move to strike it out.

By the Court: Sustained. Strike it out.

By Mr. Gerber:

Q. Do you know whether this hotel is a hotel where—

By Mr. Downing: Just a minute.

By the Court: Step into the jury room, ladies and gentlemen.

(Whereupon the following proceedings were had out of the presence and hearing of the jury:)

By the Court: You may step into Chambers a moment.

158 By the Witness: Yes.

(The following proceedings were had out of the presence and hearing of the witness:)

By the Court: I will try to be patient with you. You want to show those horrible conditions that prevailed over there, and they are bad. But that is not the question in this case, and I am not going to let you try it.

By Mr. Gerber: I appreciate that.

By the Court: And so you just stay within the direct. And I am trying to be nice to you.

By Mr. Gerber: You have been.

By the Court: And I will continue to be nice to you up to a certain time.

By Mr. Gerber: May I ask your Honor a question?

By the Court: And then if you don't do as I tell you, it will cost you something.

By Mr. Gerber: It is my understanding, under the theory of the Government's case here, that these people were all living in one hotel and they are trying to make something of that. I want to show it was not unusual, they were all refugees—

By the Court: He is not trying to make something of them all living in one hotel.

159 By Mr. Gerber: He is going to. I know it is the theory of his case, and I am getting at that.

By the Court: Don't tell me. You want to prove refugees lived there, and why they had to live there, and all this and that, and you are not going into that.

By Mr. Gerber: May I be—

By the Court: Unless you make it material.

By Mr. Gerber: May I state the materiality? It is not for sympathetic reasons.

He has now shown all these relatives he said were conspiring, were living in one hotel. That is a basis for argument. I want to show it was not unusual for that—

By the Court: He showed they were present at the time she was introduced.

By Mr. Gerber: But the testimony was that Lutwak lived there—

By the Court: You do as I tell you.

Mr. Gerber: I will do as you tell me, but I want to show the facts.

By Mr. Sokol: I am doing this, your Honor, not for the record, but I want to try to sell your Honor my idea of this thing.

Where a prosecutor makes in his opening statement a positive representation of fact—

160 By the Court: Now—

By Mr. Sokol: Just a moment, sir. I will not take up your time.

By the Court: I am telling you to stay within the direct.

By Mr. Sokol: Yes.

By the Court: And you do it, sir.

By Mr. Sokol: We are.

By the Court: Bring in the jury.

(Whereupon the following proceedings were had in the presence of the jury and witness:)

By Mr. Gerber:

Q. Maria Lutwak, when you were introduced to Marcel Lutwak in Paris at this hotel, who else was present?

A. Bernard Wirzberg, Charlotte, the uncle of Marcel, his cousin, Poldi, Munio, and some friends.

Q. These were all relatives of each other, is that right?

A. Yes.

Q. Did you hear any conversation at that time, or did Marcel tell you in any conversation then or subsequent to that time anything as to his reason for coming to Paris at that time?

By Mr. Downing: I object to that. We had no conversations testified to—

By the Court: Sustained.

By Mr. Gerber:

Q. How long did you know Marcel Lutwak before the two of you were married in Paris?

A. About four weeks.

Q. Four weeks. Was there a courtship between you?

By that I mean, did you go out together or go—

A. Yes.

Q. —to entertainment places?

A. We went out a lot, and I enjoyed his company, he is intelligent, and I fell in love.

Q. Did he—

A. We fell in love.

Q. Did he tell you anything with respect to his feelings toward you before he asked you to marry him?

By Mr. Downing: I object.

By Mr. Gerber: It bears on the marriage.

By Mr. Downing: If he wants to put someone on for direct testimony, they have a proper time and a proper part of the case to put anything on that they want.

By Mr. Gerber: He has proved they were married.
612 I want to show whether or not there was a courtship
or whether there was not, or whether the usual things
took place before the marriage testified to on the Gov-
ernment's case.

By Mr. Downing: There is a proper time for their
defense.

By Mr. Gerber: He asked the question, and we have
a right to go into it.

By Mr. Downing: We had nothing to do with conver-
sations, courtship or anything, or what led up to this
ceremony, and I submit, your Honor, that is a matter of
defense. If they want to put it in, they can put it in, in
defense.

By Mr. Gerber: I have a right to cross examine the
witness as to the incidents that led up to the marriage
that he proved.

By Mr. Downing: I went not at all into the incidents
that led up to the marriage. I asked when Marcel came
there and when they were married and that was all.

By Mr. Gerber: He proved a marriage. Don't I have
the right—

By the Court: If you would just not talk so much and
let me think, it would be better.

By Mr. Gerber: All right.

163 By the Court: What is the pending question?

(Last question read by the Reporter.)

By Mr. Downing: To which there is an objection.

By the Court: She may answer.

By Mr. Gerber: The Judge says you may answer that
question.

A. I can tell you—

Q. Are you telling what he told you now? That is
what we want.

A. He told me that he loved me.

Q. He asked you to marry him, did he?

A. Not the first time.

Q. I mean, at some time during this courtship that
you had, he did ask you to marry him?

A. Later on, that is right, after the friendship and
after we got acquainted better, he asked me if I would
marry him.

Q. All right. Now, Maria, did you at any time during
your stay in Paris, and subsequent to your stay in Paris,

during your entire stay in this country, subsequent to your marriage with Marcel Lutwak, ever live together with the defendant Munio Knoll as husband and wife?

A. No, never. We were divorced.

164 By Mr. Downing: Just a minute. Just answer the questions as they are asked. I move that be stricken, your Honor.

By the Court: Strike it out.

By Mr. Gerber:

Q. After you married Marcel Lutwak, did you live with him as husband and wife?

A. Yes.

By Mr. Gerber: That is all.

By the Court: Any further cross?

By Mr. Bartoline: Yes.

By Mr. Eben: I have just one question.

Cross Examination by Mr. Eben.

Q. By that you mean, Mrs. Lutwak, that you and your husband, Marcel Lutwak, consummated your marriage?

A. I was his wife. I belonged to him.

By Mr. Eben: That is all.

Cross Examination by Mr. Bartoline.

Q. When you were living in Paris, what name did you use? What name were you known by?

By Mr. Downing: Objection, your Honor. I do not know that there is any materiality in this lawsuit
165 as to what she was known by in Paris. There has not been any allegation that this person who is a witness here was known by any other name than he has stated.

By the Court: She may answer.

By the Witness:

A. During the persecution—

By Mr. Bartoline: No.

By the Court: No, madam, just what name were you known by in Paris?

By Mr. Bartoline:

Q. What name were you known as in Paris?

A. Maria Drozd.

Q. When did you begin using that name?

A. 1942 when we escaped from the ghetto in Hungary.

By the Court: No. You answered 1942. Strike out the rest of it.

By Mr. Bartoline:

Q. When did you first begin using that name?

By Mr. Downing: Now, if your Honor please, again I say there is no materiality to that.

By the Court: Sustained.

By Mr. Bartoline:

Q. When did you arrive in Paris?

166 A. In the end of May or the beginning of June.

Q. What year?

A. 1947.

Q. When did Munio Knoll arrive there?

By Mr. Downing: If your Honor please, I want to object to this because there again it is going beyond the direct examination.

By the Court: Sustained.

By Mr. Bartoline: So that I may state my position, if the Court please, this witness stated that they were together in Paris. I want to show when they arrived there, if they arrived there together, or what the circumstances were, your Honor.

By the Court: Objection sustained.

By Mr. Bartoline:

Q. Mrs. Lutwak, did you arrive there with Munio Knoll?

By Mr. Downing: Objection, your Honor.

By the Court: Sustained.

By Mr. Bartoline:

Q. What floor of the hotel did you live on?

By Mr. Downing: Objection, your Honor, immaterial.

By the Court: Sustained.

167 By Mr. Bartoline:

Q. Did you live with Munio Knoll at the hotel?

By Mr. Downing: Objection, your Honor, immaterial.

By the Court: Sustained. Now, I have directed counsel to stay within the direct, and I direct that specifically to you, Mr. Counsel, stay within the direct. If you want to use this witness later as your witness, and she can tell you anything relevant or competent or material, you may do so.

By Mr. Gerber: Would your Honor instruct her to remain in attendance until then?

By the Court: There may be a writ issued for that purpose.

By Mr. Sokol: If the Court please, may we have a five-minute recess?

By the Court: No, we will be recessing in a few minutes. The jury has had a recess. Are there any further questions, any further cross?

By Mr. Bartoline: Yes.

By the Court: Proceed.

By Mr. Bartoline: Will you mark this Defendant Marcel Lutwak's Exhibit 1 for identification?

168. (Said document marked Marcel Lutwak's Exhibit 1 for identification.)

By Mr. Downing: May I see this before any answer is given?

By Mr. Bartoline: I would like to have it identified first.

By Mr. Downing: Before any answer is given, I would like to look at this exhibit.

By the Court: Yes. Let counsel see it.

By Mr. Bartoline:

Q. I now show you Defendant Marcel Lutwak's Exhibit No. 1 for identification, and ask you if you have seen that before.

By Mr. Downing: If your Honor please, I am going to object to this.

By the Witness:

A. Yes.

By Mr. Downing: This document here is in a foreign language. It is all in a foreign language.

By Mr. Owen: It has not been offered, if the Court please.

By Mr. Downing: I know it has not been offered. Any reference to what is in the document or anything of that nature, I think is improper.

169 By the Court: I don't know.

By Mr. Bartoline:

Q. Does this bear your signature on the first page of that document?

A. This is mine—

Q. No, answer the question, please.

A. Yes.

Q. Is this your signature on the first page here?

A. Yes.

Q. On the second page, turning the first page over, what is this inscription here at the top?

By Mr. Downing: I object, your Honor. Wait a minute. I object to what is on the document.

By the Court: Let me see it.

By Mr. Downing: This defendant is trying to get in something in an exhibit. If he wants to put a witness on, he can do it in his case.

By the Court: What do you contend this is?

By Mr. Bartoline: That shows the year—

By the Court: No, tell me what this paper is.

By Mr. Bartoline: I don't know what it is, either.

By Mr. Downing: Then I think he should not be trying to question anybody if he doesn't know what
170 it is.

By Mr. Bartoline: I know this signature there on the date it bears—

By Mr. Downing: You might as well bring up a paper out of the street and bring it here.

By the Court: If you cannot tell me any more about this than that—

By Mr. Bartoline: That is an identification paper she used in Hungary.

By the Court: Why didn't you tell me. That is what I asked you.

By Mr. Downing: Anything she used in Hungary is certainly way beyond the scope of this direct examination.

By the Court: The objection is sustained.

We will recess at this time until 2:00 o'clock, ladies and gentlemen.

(Thereupon a recess was taken to 2:00 o'clock p.m. of the same day, Tuesday, January 9, 1951.)

• • (Caption—No. 50 CR 464) • •

Chicago, Illinois,
Tuesday, January 9, 1951,
2:00 o'clock p. m.

Met pursuant to recess.

Present:

Mr. Downing

Mr. Owen

Mr. Gerber

Mr. Bartoline

Mr. Sokol

Mr. Eben

Mr. Watt

Mr. Weissbourd

And Thereupon the following further proceedings were had herein:

By the Clerk: Case on trial.

By the Court: Proceed.

MARIA LUTWAK, a witness on behalf of the Government, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination (Cont'd) by Mr. Bartoline.

172 Q. Your name is Maria Lutwak?

A. That is right.

Q. You are the same person who testified here this morning, is that correct?

A. Yes.

Q. Now, after your marriage with Marcel Lutwak, did you live with him in Paris?

A. Yes.

Q. Where did you live with him?

A. Right after we were married, we had a room in a hotel on the rue de University.

Q. What was the name of the hotel, do you remember?

A. I don't recall the name of the hotel.

Q. That was not the le Khedive Hotel?

A. No, we moved from the hotel de Khedive.

Q. How long did you live there with him?

A. I cannot recall exactly. It was for more than a week or two. I cannot exactly recall.

Q. Now, you have testified that when you came to Chicago, you went to Mrs. Treitler's house, is that correct?

A. Yes.

Q. Why did you go to Mrs. Treitler's house?

By Mr. Downing: I object, your Honor, as to 173 why.

By the Court: Sustained.

By Mr. Bartoline:

Q. Will you tell us the circumstances under which you went to live with Mrs. Treitler?

By Mr. Downing: Objection, your Honor. The fact is she testified she lived there. Now, the circumstances, I submit, are immaterial.

By the Court: Sustained.

By Mr. Bartoline:

Q. Well, did you come to Chicago—how did you come to Chicago?

A. We came by train from New York.

Q. Was Marcel with you?

A. Yes.

Q. Now, will you tell us what took place, if anything, when you arrived in Chicago?

By Mr. Downing: Objection, your Honor. That is, I submit, going beyond the direct examination. Furthermore, the question is so general that any kind of an answer could be given that might be appropriate to the question.

By the Court: What is the question? I have forgotten.

(The last question was read by the Reporter.)

174 By the Court: Well, I will sustain the objection to that.

By Mr. Bartoline:

Q. What station did you arrive at, if you know?

A. I cannot recall.

Q. Was it the LaSalle street station?

A. I cannot recall any more the station. We came by train.

Q. Who met you at the station?

A. Marcel's mother, and the family, members of the family.

Q. Will you tell us what took place at that meeting when you arrived at the station?

By Mr. Downing: Objection, your Honor. This question, too, I think, is immaterial, what took place when they arrived. The form of the question is bad, and I do not think it is material, either.

By the Court: I haven't any idea what the answer might be, and, accordingly, I cannot tell why it may be immaterial. That is not a good reason for permitting the question. Sustained.

By Mr. Bartoline:

Q. Now, calling your attention to the time you met Marcel, and prior to the marriage in August of 1947,

175 did you ever have any discussion with him about getting a divorce after you had arrived in this country?

By Mr. Downing: If your Honor please, I object to that. There wasn't any conversation—

By the Court: She may answer.

By the Witness:

A. No, never. I mean, we married because we loved each other.

By Mr. Bartoline:

Q. Did Marcel ever visit you at the home of Mrs. Treitler when you were living there?

A. Oh, yes, every day. We were practically together all the time except his going to the office.

Q. Did you live with him as husband and wife at that time?

A. Yes.

Q. Now, when you moved over to Mrs. Sager's home, did Marcel visit you there?

A. Yes, all the time.

Q. Did you live with him as husband and wife on those occasions?

A. Yes.

Q. Now, you lived there for how long at Mrs. Sager's home?

176 A. I cannot say how long.

Q. Two or three weeks, you indicated?

A. Yes, that is right, two weeks.

Q. Then you moved back to Mrs. Treitler's home, is that right?

A. Yes.

Q. Did he visit you there?

A. Yes, sir.

Q. Did you live with him as husband and wife there?

A. Yes.

Q. Then when you moved to 3545 West Maypole—

By Mr. Downing: If your Honor please, may the record show if I said 35, I should have said 3345. I think I did say 35, and I have been told that I said 35. May we have the record changed to 3345?

By the Court: Very well.

By Mr. Bartoline:

Q. When you arrived at 3345 West Maypole, did Marcel Lutwak visit you there?

A. Yes.

Q. And did you live with him as husband and wife?

A. Yes.

Q. Where were you married in Paris?

A. At the City Hall.

177 Q. At the City Hall in Paris?

A. Yes, I think they call it the City Hall.

By Mr. Bartoline: Will you mark this defendant Marcel Lutwak's Exhibit No. 2 for identification?

(Said document was marked Marcel Lutwak's Exhibit 2 for identification.)

By Mr. Downing: May I see it?

By Mr. Bartoline:

Q. I now show you exhibit marked Defendant Marcel Lutwak's Exhibit No. 2. Will you tell me if you have seen this before?

A. Yes.

Q. Can you tell us by an inspection what that instrument is?

By Mr. Downing: Just a minute. I object to this. First of all, this is all in a foreign language, and, secondly, it was not covered—it was not any part of the direct examination.

By the Court: What is it?

By Mr. Bartoline: It is a marriage certificate.

By Mr. Downing: Wait a minute. The document—I mean, it is all in a foreign language. When the time comes, if he wants to put it in, all right.

178 By the Court: What is it?

By Mr. Bartoline: It is a marriage certificate.

By the Court: Do you contend that it is a marriage certificate?

By Mr. Downing: I do not think it is a marriage certificate. If you read the French there, it is not a marriage certificate. If your Honor please, I have a translation of the front of that back to the inside cover starting here, your Honor. However, it is not for that particular book, but it covers the French translation. I think that page, your Honor, deals with the general items of information that are requested, but the answers apply to another one, not that particular book.

By the Court: I understand.

179 What is the question?

By Mr. Bartoline: I think my question was, if I remember correctly, what that was, if she knew.

By Mr. Downing: To which there was objection.

By the Court: She may answer if she knows.

By Mr. Downing: First of all, I think it ought to be determined whether she knows anything about French.

By the Court: She may answer if she knows what it is. You may cross examine.

By Mr. Bartoline:

Q. I hand you again Marcel Lutwak's Exhibit 2 for identification and ask whether or not you know what that is.

A. It is our marriage certificate which I signed at the Mayor.

Q. In the City Hall?

A. Yes.

By Mr. Downing: I didn't get that.

By Mr. Bartoline: It is the marriage certificate which she signed in the City Hall.

Will you mark this Defendant Mareel Lutwak's Exhibit 3 for identification?

(Document so marked.)

By Mr. Bartoline:

Q. I now show you Defendant Mareel Lutwak's Exhibit 3 for identification and ask you if you have seen this before.

A. It is also a document—

Q. No. The question is, have you seen it before?

A. I can't be sure about it.

Q. You cannot be sure about it?

A. I mean I don't know exact how to express it. It is one of our documents about our marriage, and at the Mayor.

A. At the Mayor's office?

A. Yes.

By Mr. Bartoline: Does the court want to see this?

By the Court: I haven't heard any objection.

By Mr. Bartoline: Mark the Defendant Mareel Lutwak's Exhibits 4 and 5 for identification.

(Documents so marked.)

By Mr. Bartoline:

Q. I now show you Defendant Marcel Lutwak's 181 Exhibits 4 and 5 for identification and ask you if you have ever seen these before?

A. This is our—

By Mr. Downing: Just a minute.

By Mr. Bartoline:

Q. No. Have you seen them before?

A. Yes.

Q. Will you tell us what they are, if you know?

By Mr. Downing: If you Honor please, I object to all this. I still state that if they want to put exhibits in or want to find out about exhibits, they can call a witness at the time they put on their case, and put it in. This has not been covered at all. All this examination as to these last two exhibits and as to these two exhibits—

By the Court: I don't know what these are.

By Mr. Downing: Those things are examinations of the doctor.

By Mr. Bartoline: These are examinations of the doctor as to their physical capacity to marry and whether or not they had any disease.

182 By Mr. Downing: That certainly is not material to the thing. There has not been any charge one way or the other on that, and there certainly was no discussion in the direct examination about that. I think we are just cluttering up the record here. We are asking questions about things which were certainly not covered on direct examination—

By Mr. Bartoline: They covered the marriage.

By the Court: What is the pending question?

By Mr. Bartoline: Is she knows what these documents are.

By the Court: She may answer. Overruled.

By Mr. Bartoline:

Q. Will you tell us what they are?

A. Yes.

By Mr. Eben: May I call your attention to the fact that Mrs. Lutwak is very soft spoken, and I believe the two ladies and the gentleman in the back cannot hear a word that is being said.

Will your Honor ask her to keep her voice up?

183 By the Court: Speak louder.

By the Witness: Yes.

By the Witness:

A. This is the medical examination before—from the doctor.

By Mr. Bartoline:

Q. Of—

A. Myself and my husband, Marcel.

By Mr. Bartoline: That is all.

By Mr. Eben: May I ask four or five questions, your Honor?

By the Court: You have not cross examined yet?

By Mr. Eben: I asked one question before.

By the Court: If you have some questions you forgot, you may now ask them.

By Mr. Eben: Yes,

Cross Examination by Mr. Eben.

Q. Mrs. Lutwak, in replying to me, I am hard of hearing, and if you can make me hear I am sure the other folks on the jury will hear. Will you make an effort to keep your voice up?

184 A. I will try.

Q. When you arrived in Paris you met Marcel, did you not, just four weeks or so before your marriage to Marcel Lutwak?

A. Yes.

Q. You testified this morning that when you arrived in Paris on that occasion that you also met Leopold Knoll as well as several other people, isn't that true?

A. It isn't exactly clear to me what you are asking me, when I arrived to Paris or when Marcel came to Paris. What do you ask me?

Q. You met them there in Paris when you arrived?

A. Yes.

Q. Poldi is Leopold Knoll, this man who sits here, isn't that right?

A. Yes.

Q. The night after you arrived in Paris Mr. Leopold Knoll left Paris, didn't he?

A. I don't think it was exactly the day when I arrived, the day after. It was a few—

Q. Beg your pardon?

A. It was later. It was not on the day when I came to Paris.

185 Q. Did he leave Paris while you were there?

A. Yes.

Q. How soon after you arrived?

By Mr. Downing: I submit that is immaterial, and certainly was not a part of the direct examination.

By the Court: She may answer.

By Mr. Eben: Excuse me. I didn't hear.

By the Court: She may answer.

By Mr. Eben: I think maybe I have been a little confusing about this.

By Mr. Eben:

Q. When Marcel arrived you were already in Paris, isn't that true?

A. Yes.

Q. Isn't it a fact that the day after Marcel arrived from the United States Leopold Knoll left Paris?

A. Yes. He went to a sanitarium.

Q. You and Marcel Lutwak, whom you ultimately married, went around Paris together for approximately four weeks before your marriage?

A. Yes.

Q. Was Leopold Knoll in Paris during that time?

186 A. I don't think—I think he was in the sanitarium, or whatever—

Q. Beg your pardon?

A. He was sick, and he was sent by the doctors to a sanitarium.

Q. Then he was not in Paris, isn't that true?

A. Yes, that is true.

Q. Isn't it a fact that Leopold Knoll did not return to Paris until after you and Marcel Lutwak had been married?

By Mr. Downing: I object to that. That certainly is not material, and it is not proper cross examination.

By the Court: She may answer.

By Mr. Eben:

Q. Shall I repeat it?

A. Yes, if you please.

Q. I said, isn't it a fact that Leopold Knoll did not return to Paris until after you and Marcel Lutwak had been married?

A. Yes.

Q. So then it is also true, is it not, Mrs. Lutwak, that Leopold Knoll was only there for one day when Marcel was in Paris before—Strike that,

187 He was there only for one day during all the four weeks that you and Marcel were running around together before you got married?

A. Yes. Poldi was in a sanitarium.

Q. All right. When you arrived in Chicago I believe you testified you were met at the station by a number of people, isn't that true?

A. Yes.

Q. Was Mrs. Treitler one of those persons who met you at the train?

A. I guess yes. I am not sure. But the family was there.

Q. Isn't it a fact that Marcel's mother was one of the persons who met the train also?

A. Yes.

Q. Marcel's mother was your former sister-in-law, wasn't she?

A. By my first marriage.

Q. To Munio, isn't that right?

A. Yes.

Q. When you arrived here did Marcel engage in any conversation with his mother, yes or no, that is, at the station?

A. Yes.

Q. And it was after that that you went to the home 188 of Mrs. Treitler, isn't that true?

A. We went to Mrs. Treitler's home.

By Mr. Eben: That is all.

By Mr. Downing: Any more cross examination?

By the Court: Any further cross examination?

By Mr. Downing: May I just a moment, your Honor?

Redirect Examination by Mr. Downing.

Q. You were shown on cross examination these two exhibits, Defendants Exhibits 3 and 2, for identification.

Do you read French, Miss Witness? Do you read French?

A. No, not fluently, but I know them. They are our marriage—

Q. You don't read French, however, is that right?

A. No, no, not fluently anyway, but I know what they are.

Q. At the time you were living at 3345 West Maypole Street here in Chicago Mr. Munio Knoll was also living in the same apartment, isn't that right?

A. Yes.

189 Q. And after you went to New York and returned to Chicago the second time, that is, in June of 1948, did you see Marcel Lutwak after you came back to Chicago in June through November, 1948?

A. I tried to see him, but—

Q. Did you see him?

A. I did not, because his mother came—

Q. Just a minute. You didn't see him throughout the whole time between June and November, 1948, isn't that right?

A. No.

Q. And during that time you were in Chicago, is that right?

A. Yes.

By Mr. Downing: That is all.

Recross Examination by Mr. Bartoline.

Q. You say you do not read French, but do you know what these documents were?

A. Yes.

Q. Referring to what defendant Marcel's Exhibit 2—

By the Court: She already told you what they were. Anything else from this witness?

190 By Mr. Bartoline: That is all.

By Mr. Downing: That is all. You may step down.
(Witness excused.)

By Mr. Downing: If your Honor please, at this time the Government would like to offer in evidence Government's Exhibit 19 marked for identification, which is a certified copy of the record of the Superior Court of Cook County, being a decree for divorce in the Superior Court of Cook County on the 31st day of March, 1950, between Marcel M. Lutwak and Maria Irene Lutwak, this being a certified copy under the seal of the Clerk of the Superior Court of Cook County in the State of Illinois.

By Mr. Sokol: For the record, I will object on behalf of Regina Treitler, there being no connection shown as far as the parties were concerned, or any identity with reference to that, of the decree.

And for the record I also object to the testimony just given.

By Mr. Eben: Same objection on behalf of Leopold
191 Knoll.

By Mr. Owen: And as to Munio Knoll, if the Court please.

By the Court: The witness who just left the stand testified she had been divorced.

192 By the Court: The defendant is Maria Irene Lutwak and the plaintiff here is Marcel M. Lutwak. The witness was Maria Lutwak, and I understood her to say

that was the same as Maria. The defendant in this decree is Maria Irene Lutwak. I think that makes sufficient identification. The objection will be overruled and the exhibit may be received.

(Said document, so offered and received in evidence, was marked Government's Exhibit 19.)

By Mr. Downing: Your Honor, may I have permission to read it to the jury, please?

By the Court: Yes.

By Mr. Eben: Has the exhibit been received generally against everyone?

By the Court: At the present time, it will be received against these parties.

By Mr. Downing: I say at the present time it is receivable against all of them.

By the Court: I will receive it for the moment against Marcel M. Lutwak.

196 JOSEPH LUDMER, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Downing.

Q. Will you state your name, please?

A. My name is Joseph Ludmer.

Q. What is your address, Mr. Ludmer?

A. 1615 Hillside avenue, New Hyde Park, Long Island.

197 Q. What is your business or occupation?

A. Farrier.

Q. Where do you have your place of business?

A. Same address.

Q. Do you know the defendants, Munio Knoll, Marcel Lutwak, Regina Treitler and Leopold Knoll?

A. I do.

Q. Do you see them in the court room?

A. Yes, sir.

Q. Will you point them out, please?

A. This is Regina Treitler, Leopold Knoll and Marcel Lutwak and Munio Knoll.

By Mr. Downing: Let the record show that the witness has identified the defendants in the court room.

Q. Are you related to any of the defendants?

A. Through marriage, yes.

Q. When did you first meet the defendant Munio Knoll?

A. Some time between Christmas and New Years, December, 1947.

Q. And the defendant Marcel Lutwak, when did you first meet him?

A. Some time in 1939.

Q. And the defendant Regina Treitler, when did 198 you first meet her as best you recall?

A. 1936.

Q. And the defendant Leopold Knoll, as best you recall, when did you first meet him, approximately?

A. In December of 1947 some time.

Q. Now, directing your attention to the month of December, 1947, to which you have referred, did you have a conversation with any of the defendants regarding their coming to the United States?

A. I had no conversation.

Q. Had you ever had a conversation at which Munio Knoll was present regarding his coming to the United States?

By Mr. Sokol: Objection, leading.

By the Court: You may answer.

By the Witness:

A. I was one evening in the house of Regina Treitler—

By Mr. Downing: Just a minute. That is not the question.

Q. Have you had a conversation at which he was present, yes or no?

A. They had a conversation.

Q. Were you present?

A. I was present.

Q. Approximately when was that, as best you recall?

199 A. In the early part of February, in 1948, in the house of Regina Treitler.

Q. Prior to that time, did you have any conversation or were you present at any conversation?

A. No.

Q. Now, at this time, in February, 1948, where did this conversation take place?

A. In the house of Regina Treitler.

Q. Who was present at that time?

A. Regina Treitler, her husband, her two children, my son, Munio Knoll, and Marcel Lutwak.

Q. Was there anybody else present, that you recall?

A. I don't recall.

By the Court: What was the last person named?

By Mr. Downing: Marcel Lutwak.

Q. Now, as best you can recall, will you relate the substance of that conversation, stating who said what, in your presence?

By Mr. Eben: Objected to on behalf of Leopold Knoll.

By Mr. Sokol: Objection also on behalf of Regina Treitler.

By Mr. Gerber: Objection on behalf of Munio Knoll.
200. By the Court: Just a minute. There is an objection on behalf of Leopold Knoll, and somebody else got up and said something. I don't know what it was.

By Mr. Gerber: I am sorry.

By Mr. Sokol: I am sorry. I am objecting on behalf of Regina Treitler.

By Mr. Gerber: And I am objecting on behalf of Munio Knoll on the ground that he is not mentioned as being present in the conversation.

By Mr. Downing: Oh, yes; he said he was there.

By the Court: Yes. He said he was there.

By Mr. Gerber: I am objecting to it on the further ground there has been no conspiracy shown here as yet, and it is not competent.

By the Court: The objection as to Munio Knoll and Regina Treitler will be overruled. That as to Leopold Knoll will be sustained. Evidence as to the conversation will be received—Marcel Max Lutwak was said to be present?

By Mr. Downing: That is right.

By the Court: The conversation will be received as against Munio Knoll, Marcel Max Lutwak and Regina Treitler. It will not be received presently against Leopold Knoll, and will not be received against him unless a conspiracy is shown.
201

By Mr. Bartoline: I am objecting on behalf of the defendant Marcel Lutwak because this conversation was supposed to be in February, 1948.

By the Court: Objection overruled.

By Mr. Downing:

Q. Will you relate the conversation, stating, in substance, as best you can recall, who said what, identifying the persons talking.

By the Witness:

A. It was on Sunday evening. I arrived from Seattle, Washington, and I drove over to 3345 West Maypole street, which was the residence of Munio Knoll and Mania Knoll.

By Mr. Eben: Just a moment. The jurors are indicating they cannot hear.

By the Court: Speak louder so that the last lady and the last gentleman can hear. Commence again, now.

By the Witness:

A. I arrived Sunday evening from Seattle, Washington; and I drove over—

By Mr. Sokol: If the Court please, he is supposed 202 to tell what the conversation was.

By the Court: Oh, I know that. Let him get started.

By the Witness:

A. I found their home closed, and I drove over to the residence of Irene Lutwak. This was on Maypole street, and I sat down a few minutes in the house. A telephone call came through, and I happened to answer the 'phone. Mrs. Treitler was on the other side, and she recognized my voice, and she asked me to come over immediately to her home, that she had something very important to tell me. Thereafter, I came over to Regina Treitler's home. I sat down for a few minutes. At that time, I was contemplating a business association with her brother, William Knoll, and she asked me not to complete it, not to go through with it. A few minutes later

203 Marcel walked in, and asked me to go back to his house as Munio Knoll was there. There an argument started between Regina Treitler—

By Mr. Eben: I think the characterization, argument, should go out.

By the Court: Well, there was a conversation.

By Mr. Downing:

Q. Now will you state what was said?

By Mr. Gerber: May I make an objection, your Honor, that the answer is not at all responsive to the question.

By the Court: Overruled.

By Mr. Gerber: The place of the conversation was different, your Honor.

By the Court: He has told you where he was. Proceed.

By the Witness:

A. An argument between them started, and later Munio Knoll came into the same house and entered the argument and fight between—

By Mr. Eben: Now, your Honor, I think that should go out.

By the Court: Yes, strike it out. Just state what 204 was said. Don't characterize it.

By Mr. Downing:

Q. Just tell us in substance what was said.

By the Court: Just tell us what was said, and do not characterize it.

By the Witness:

A. That they had got girls to help—

By the Court: Tell us who said that.

By the Witness:

A. Mrs. Regina Treitler said that she had helped them come to this country by getting girls and paying them off. I did not know at that time, or the moment, what it all meant.

By Mr. Eben: That is objected to, your Honor.

By the Court: Strike out what he didn't know. Just tell us what was said and done. If anybody said anything, say who said it, and what they said, and if anybody else said anything, state who said it and what was said.

By the Witness: Your Honor, it was—

By Mr. Downing:

205 Q. No, Regina Treitler said what?

By Mr. Sokol: Just a moment. There is nothing in the record as to what anybody said so far. Don't assume that.

By the Court: Yes, there is.

By Mr. Downing:

Q. After that was said, what else was said?

A. Mrs. Treitler said that she paid the girls off, and Munio Knoll argued that he paid the girls off.

Q. Was there any sum of money mentioned at that time?

A. Yes, sir.

Q. Tell us what was said?

A. Mrs. Treitler said she paid off a thousand dollars each, and Mr. Knoll claimed it cost him ten thousand dollars to bring them all over.

Q. Now, what else was said?

A. Well, the argument was going on back and forth which lasted more than an hour or so.

Q. Do you recall anything else that was said about any payments or what was given to any of these girls at the time they came over?

A. Payments were mentioned in the argument. They said they were given to the girls—

206 By Mr. Eben: I will suggest when this witness proceeds, that he follow the formula, and I think your Honor should make clear to him to say he said and she said, and I think in that way that will obviate all these asides that the witness is giving to the jury.

By the Court: What counsel has said is proper. If you will follow this formula, we won't have any difficulty, and you won't have any interruptions.

Mr. Blank said so and so, if Mr. Blank did, and Mrs. Roe said so and so, and so and so, if she did, and Mrs. Roe said so and so and so and so, if she did say anything, and so on.

If you will just pursue that formula, it will save a lot of wear and tear on the counsel and on the court.

By Mr. Downing:

Q. Do you recall anything else that was said at that particular meeting that you have been testifying about?

A. The argument was going on.

207 By the Court: Don't say "argument".

By the Witness:

A. Mrs. Treitler was arguing.

By the Court: No. She said—

The Witness: Mrs. Treitler said—

By the Court: What?

By the Witness:

A. That she made the payments to the girls, and Mr. Knoll said that he gave the money to pay the girls.

By Mr. Downing:

Q. Is that Mr. Munio Knoll?

A. Mr. Munio Knoll.

Q. All right.

A. That argument was going on between them back and forth.

Q. All right. What else did Mr. Knoll or Mrs. Treitler say at that time? Can you recall anything else at this time about that subject?

A. The details of the procedure were not brought out except the money.

Q. Now, thereafter, that is, after that time, did you have any further conversation with any of the defendants, that is Munio Knoll or Regina Treitler or Marcel Lutwak or Leopold Knoll about this same subject matter you just testified about?

A. After that meeting I never spoke to Mrs. Regina Treitler again.

Q. Thereafter, did you talk to Munio Knoll about the matter?

A. Not about the matter.

Q. Now directing your attention to February, in the same month, February of 1948, did you have occasion to go to the defendant Marcel Lutwak's house?

A. Yes.

Q. Approximately when was that, do you recall?

A. It was on Monday evening. I don't remember the date.

Q. Who was present at that time?

A. In the apartment, only myself and Lutwak.

Q. Did you have a conversation with Marcel at that time?

A. I found him lying in bed with his arm in a plaster cast.

Q. Marcel was lying in bed in his apartment?

A. Yes.

Q. Describe to the court and jury what his condition was at that time.

209 A. I found him lying in bed. His arm was in a plaster cast.

Q. Did you have any conversation with him then at that time?

A. No.

Q. While you were there, did anyone come in?

A. Munio Knoll walked in a few minutes later.

Q. How long did Munio Knoll and yourself remain there at that time?

A. Hardly a few minutes.

Q. Then what did you do?

A. He asked me downstairs, and I drove him to the Union Station?

Q. Who is "he" now?

A. Mr. Knoll called me downstairs to drive him down to the Union Railroad Station.

Q. Is that here in Chicago?

A. Here in Chicago.

Q. Did you have a conversation with the defendant Munio Knoll when you were driving him down to the Union Station? Did you talk to him about any of the defendants in this matter?

By Mr. Gerber: I object. He has already told the District Attorney he never had any other conversation with Munio Knoll about this matter, your Honor.

By the Court: Overruled.

By Mr. Downing:

Q. Tell us what you had a conversation with Munio Knoll about at that time.

A. In the car driving to the Union Station—

By Mr. Eben: Just a moment. In this conversation, the same objection on behalf of Leopold Knoll.

By the Court: For the present, this conversation which is now about to be detailed will be received only as against the defendant Munio Knoll. Proceed.

By the Witness:

Q. Munio Knoll told me in the car that he had suddenly, Saturday night, returned from New York, and was trying to get into his apartment. He had a few minutes hardship to get in, to unlock the door. He finally did get into his apartment, and he told me that Marcel jumped through the window down into the street.

By Mr. Eben: There is another objection to that as being immaterial. It is after any conspiracy or alleged conspiracy came to an end. It is narrative which does not constitute an admission against interest, and I think the whole conversation is completely immaterial.

By the Court: Step into the jury room, ladies and Gentlemen.

212 (Whereupon the following proceedings were had out of the presence and hearing of the jury:)

By the Court: When I ordered the jury out, I hadn't thought quite far enough.

I was going to ask you what your theory is. I guess I can figure one out.

By Mr. Downing: I think it is very easily determined.

By the Court: I am rather slow on the uptake sometimes.

Who made that objection?

By Mr. Eben: I made it.

By the Court: What have you to urge?

By Mr. Eben: My objection is based on a number of grounds, the first one of which your Honor already sustained, at least on the grounds that conspiracy not having yet been proved, it will be limited for the time being or presently to the defendant Munio Knoll.

Further, even if a conspiracy had been proved already, and your Honor might at some future time decide to let the conversation go in against my client, it is not an act or declaration in furtherance or pursuance of the conspiracy.

Furthermore, I think your Honor should instruct 213 the jury even in the event it is ever received, it is not the truth of the matter which the man says, but merely his statement as to what somebody else said in the thing.

In addition, I also urge on the court this is a matter which happened some time after the alleged conspiracy came to an end, that is, after the two men had arrived from Europe, and the lady involved.

That is the extent of my objection.

By Mr. Sokol: In further support of that, there is no evidence in the record yet with respect to any entries other than that of Maria Lutwak. Furthermore, that the testimony of this witness has related to persons other than the entry of Maria Lutwak, and no conspiracy has been shown.

With respect to the conversation relating to the manner in which something has been obtained, this witness is being tendered to testify in respect to a conversation, as Mr. Eben suggested, which took place a good deal of time after the one entry, let us say, the first and only entry which is in the record, and did not relate to this witness at all.

By the Court: Well, I don't think the conversation 214 could hardly be said to be in pursuance of the conspiracy, in the terms of the indictment.

By Mr. Downing: Why, your Honor, they were talking about what was paid to get into the—

By the Court: No, no, no, about a man jumping out of a window.

By Mr. Bartoline: Yes.

By Mr. Downing: I thought he was talking about the latter part of his argument. I am not so sure that is not very directly material to this conspiracy.

By the Court: I did not say it is immaterial. I said it could hardly be said to have been said in pursuance of the conspiracy, but I think what Mr. Munio Knoll said to the witness certainly would be admissible against him.

Bring in the jury.

By Mr. Bartoline: Except here, if the Court please, the conversation is that he, Munio Knoll, told him what was supposed to have happened, and he charges someone else with having done something.

I am representing Marcel Lutwak and I am making my objection on that score.

By the Court: I am admitting it as against Munio Knoll, nobody else.

215 By Mr. Bartoline: All right.

(Whereupon the following proceedings were had in the presence and hearing of the jury:)

By the Court: Ladies and gentlemen, the conversation which the witness detailed between himself and the defendant, Mr. Munio Knoll, in the automobile on the way to the railroad station, and relating to someone's having jumped from a window, is received and is to be considered by you only as against the defendant Munio Knoll, and nobody else.

By Mr. Downing:

Q. Is there anything more that you have not already testified to concerning this conversation? What else did Munio Knoll tell you at that time, that is, while you were on the way to the Union Station?

A. Nothing further was discussed.

Q. Pardon?

A. Nothing was further discussed.

Q. After you arrived at the Union Station, what did you do?

A. He bought a ticket to New York.

Q. Thereafter where did you go?

216 A. We returned back to home.

Q. And where was that to? Was that to Munio Knoll's?

A. No, I had a furnished room and I went back home by myself, left him.

Q. Where did you last see Munio Knoll?

A. The following day.

Q. Did you leave him at the Union Station?

A. No, no, he returned to my car.

Q. Then where did you take him?

A. I think back to his apartment.

Q. Is that the apartment you have referred to as 3345 Maypole?

A. That is right.

Q. Did you go to his apartment with him after you took him to that address?

A. The next day.

Q. Who was present the next day?

A. Munio Knoll.

Q. Anyone else present?

A. He took his luggage for his wife, and he asked me to drive to the Union Station—

Q. And whom did you drive down to the Union Station?

A. His wife, Mania.

By Mr. Eben: I object to that. That is a complete conclusion and I think the jury should be instructed to disregard it.

By Mr. Downing: This man said he told him he wanted to drive his wife to the station—

By Mr. Eben: No.

By Mr. Downing: He testified to that.

By Mr. Sokol: That is Mr. Downing's characterization.

By Mr. Downing: Let the record be read.

By the Court: What did Mr. Knoll say?

By the Witness: He asked me to drive his wife Mania to the Union Station, which I did.

By Mr. Downing:

Q. Have you seen Mania in or about this court room today?

A. I saw, past in the hall.

By the Court: You saw Mania in the hall today?

By the Witness: Yes.

By Mr. Eben: I object also to this conversation on behalf of Leopold Knoll.

By the Court: It is received. I told the jury that this conversation is received only as against the defendant Munio Knoll.

By Mr. Eben: I understand that completely, but 218 then the new conversation comes along.

By the Court: It is received only as against Munio Knoll.

By Mr. Downing:

Q. Where did you take Mania to at that time?

A. To the Union Station, rail station.

Q. Did anyone else accompany you and Mania?

A. Nobody was in the car besides her.

Q. Did she board a train at that time, if you know?

A. She boarded a train and she left for New York.

Q. Directing your attention to the Sunday preceding this Monday that you had a conversation with Munio Knoll, about which you have testified, did you see the defendant Marcel Lutwak on that day?

A. That Sunday?

Q. The Sunday before, yes.

A. Yes. I saw him during the day.

Q. Where did you see him during the day, that is, on the Sunday?

A. During the afternoon hours I was visiting a niece.

Q. And who was there, if you remember?

A. That is a daughter of Mrs. Sager. I don't remember her marriage name.

219 Q. Who was with you and Marcel, if anyone, at that time?

A. Mr. and Mrs. Sager. Mania Knoll was there and Marcel Lutwak was there.

Q. By the way, when you were acquainted with Mania here in Chicago, what was the last name that you knew her by?

A. It was Mrs. Knoll.

Q. Now, on this Sunday preceding the day you had this conversation with Marcel Lutwak,—strike it.

The day preceding the day you had the conversation with Munio Knoll, did Marcel Lutwak on that Sunday have the same cast on his arm that you observed him with on Monday in his residence?

A. No, sir.

Q. Did he have any kind of a cast on his arm on that Sunday?

A. No, sir.

Q. Where did you leave Marcel that Sunday?

A. Sunday evening we all returned back from home and I left them all off at their own homes.

Q. Each at their respective homes?

A. That is right.

Q. And where did you leave off Mania?

220 A. Also in her own home.

Q. What was the address of her home?

A. It was 3345, I believe, Maypole.

Q. Is that the same apartment building that Munio Knoll, that you visited Knoll at?

A. That is right.

Q. And where did you leave Marcel Lutwak?

A. At his home.

Q. And do you recall what street that was on?

A. That was 42, I believe, or 44 West Madison—I don't—

Q. Madison street?

A. Madison street. I don't recall the exact number.

Q. Mrs. Sager, do you recall what street she lived on?

A. I don't recall the number, but it was West Adams street.

Q. Directing your attention to this address at 3345 West Maypole, prior to the time that you had this conversation with Munio Knoll, about which you testified, had you had occasion to visit his residence at that time at that address?

A. Yes, sir.

Q. And between the 1st of January, 1948, and up to the time this event took place, approximately how
221 many times did you have occasion to visit this place?

A. Most every day. In the morning I used to pick him up and take him downtown, because we was supposed to fix up a loft for a business.

Q. Were you contemplating going in business with Munio Knoll?

A. That is right, sir.

Q. Do you recall what floor Munio Knoll's apartment was?

A. It was on the third floor, I believe.

Q. Do you recall how many rooms there were in this apartment?

A. One bed room and a living room and a kitchenette, small kitchen.

Q. Did you ever have occasion to see anyone there besides Munio Knoll, that is, in the mornings when you would go there?

A. Mrs. Mania Knoll and Munio Knoll.

Q. Did you ever see anyone there other than those two in the mornings when you would go there?

A. No, sir.

Q. Pardon?

A. No, sir.

By Mr. Downing: You may cross examine.

222 By Mr. Sokol:

Q. Directing your attention to this telephone call you say you received from Mrs. Treitler in the first instance she did not ask you your advice over the telephone at that time, did she?

A. No, she asked me to come over to her house.

Q. To come over, and did she ask you for advice when you came over there? No one asked you for any advice when you came over to the apartment?

A. In what respect?

Q. I am asking you, no one asked you for any advice when you came over to this apartment?

A. I don't get that word, advice. In what respect, advice?

Q. Did anyone ask you for your help? No one asked you for any help when you came over to that apartment in response to that 'phone call you got?

By Mr. Downing: If your Honor please—

By the Witness: I don't get the word "help" or "advice".

By Mr. Downing: First of all, I don't think it is material to any—

By Mr. Sokol: I have just begun. I would like 223 to have an opportunity to at least get started.

By Mr. Downing: The rules don't say that we do not have a right to object, regardless of when you begin.

By the Court: The witness says he does not understand the use of the word "advice". He doesn't understand "help".

By Mr. Sokol: He seems to have understood Mr. Downing rather well.

By the Court: No, strike out that observation.

By Mr. Sokol:

Q. You came from Seattle for the purpose of going into business, isn't that right?

A. Yes.

Q. You intended, when you came from Seattle, to find someone in Chicago either who had capital or who would be able to help you in business?

A. We talked that before, yes.

Q. It was your intention, that you would get some bond or association so that you might go into business with someone else, using either capital or materials, or something else, that would set up a fur business?

A. I have not talked to somebody else except Munio Knoll.

224 Q. I am speaking of your intentions when you first came to Chicago from Seattle?

A. Yes.

Q. At the time you came over to this apartment, you had just come into Chicago from Seattle, isn't that right?

A. Yes.

Q. You say you got this telephone call and someone said, or Mrs. Treitler said, "Come over to this apartment," and you have said you were not asked for any help or any advice in this conversation. Were you asked for any assistance? Were you asked to give your assistance to anyone in this apartment at that time. You were not, were you?

A. No, I was not.

Q. You merely sat there and listened, isn't that right? You want us to believe you heard this story and you merely sat there and listened; isn't that right?

A. Just a minute, sir, I didn't get that.

By Mr. Sokol: Read the question back, Mr. Reporter.
(The last question was read by the Reporter.)

225 By the Witness:

A. Yes, but this has happened after Marcel followed me into the apartment—

By Mr. Sokol: That is all. I move the rest be stricken.

By Mr. Downing: I think it is responsive.

By the Court: Let it stand.

By Mr. Downing: He asked for it. He got it.

By Mr. Sokol:

Q. You had a conversation with Mrs. Treitler about going into business, did you not?

A. I had no conversation with Mrs. Treitler about going in business.

Q. You had some conversation, did you not, in which Mrs. Treitler suggested to you that your personality and Munio's personality might not match and you would not be good business partners, did you not?

By Mr. Downing: I object. All these alleged conversations with Mrs. Treitler or anyone else about going into business, there was one question I admit I asked on direct examination about, did he go or was he contemplating going into business with Munio Knoll? There was not anything about any business conversations at this particular meeting that they had up there in Mrs. Treitler's apartment to which he testified, and I think it is beyond the direct examination.

By the Court: Oh, he may answer; he may answer.

By Mr. Sokol: Read the question.

(The following question was read by the Reporter:)

"Q. You had some conversation, did you not in which Mrs. Treitler suggested to you that your personality and Munio's personality might not match and you would not be good business partners, did you not?"

By the witness:

A. This conversation did not happen in that evening.

By Mr. Sokol:

Q. But you did at such time have such a conversation?

A. The conversations all happened before my arrival—before that.

Q. Yes, but you did have that conversation, did you not?

A. Well, naturally, I had to have conversations of contemplating going into business.

Q. You can just say yes or no, Mr. Witness. You did have such a conversation, did you not?

227 A. With Mr. Munio, no?

Q. No.

Will you read back the question?

(The following question was read by the Reporter:

"Q. You had some conversation, did you not in which Mrs. Treitler suggested to you that your personality and Munio's personality might not match and you would not be good business partners, did you not?"

By The Witness:

A. Yes, that happened—

By Mr. Sokol: Fine. We finally got it.

By Mr. Downing: If your Honor please, I move to strike that out.

By The Court: Strike out that observation of counsel.

By Mr. Sokol: I am sorry. I will apologize for that.

Q. You did not follow Mrs. Treitler's advice, but you did go into business with Munio Knoll?

A. I did not go in business with Munio Knoll.

228 Q. Isn't it a fact that at some time you did associate yourself in business with Munio Knoll?

A. I did not associate myself in business with Munio Knoll.

Q. What business relationship did you have with him thereafter?

A. I was waiting trying to get associated, but it never materialized.

Q. Ah hah, but you did make some previous plans, did you not?

A. Yes.

Q. And you discussed what kind of a business, isn't that right?

A. Yes.

Q. And you discussed what you would sell or manufacture, isn't that right?

A. Yes.

Q. Now, you had a falling-out with Munio Knoll, didn't you, that ended in disagreement, did it not?

A. I broke away from him, yes.

Q. All right, and the parties were bitter on both sides, were they not, after this breaking up?

By Mr. Downing: Objection.

By The Court: Overruled.

229 By Mr. Sokol:

Q. What do you mean, you were bitter after this agreement or preliminary arrangement broke up? You can answer that question.

A. I don't know. Can I answer that question?

By The Court: If you can.

By The Witness: I will not answer that question because it will carry you too far in.

By Mr. Downing: If the court please--

By Mr. Sokol: Wait a minute. I want to hear that. I didn't hear it, and I want to hear it.

By Mr. Downing: I will tell you what he means. I would rather tell you--

By Mr. Sokol: I want to hear the answer, because I didn't hear it. What was the answer?

(Last answer was read by the reporter.)

By The Witness: Not you. It will carry the matter too far in. It is painful to me.. It is painful to me.

230 By Mr. Downing: I will explain it out of the presence of the jury, your Honor.

By The Court: I don't know, if counsel wants to go ahead—

By Mr. Downing: I am just making the statement.

By Mr. Sokol:

Q. I have asked you this question, and this is the answer—I will not tell you what the answer is, but I am suggesting to you this, that as a result of this break up of your preliminary arrangement there was bitterness on both sides, Munio Knoll was bitter with you and you were bitter with Munio Knoll? Wasn't there some anger or excitement or disappointment on both sides?

By Mr. Downing: If you Honor please—

By The Witness: Just a moment.

By Mr. Downing: He asked for three different types of emotions there.

By The Court: Yes.

By Mr. Downing: I think we had better characterize something.

By Mr. Sokol: I have a right to lead.

By The Court: Ask him whether there was anger.

231 By Mr. Sokol:

Q. You were angry when this thing broke up?

A. Just a minute, sir. May I ask a question, your Honor?

By The Court: Yes.

By The Witness: As I understand it, you are defending Mrs. Treitler?

By Mr. Sokol:

Q. That is right.

A. I have no further to say against Mrs. Treitler, what you are involving me against Mr. Munio Knoll, about the bitterness—as I understand, the court is here in an entirely different procedure, and not against my personal bitterness, so I would eliminate further questioning.

By Mr. Sokol: If the Court please, I think in fairness to this witness I should merely indicate this—all I have wanted to find out was this thing, and actually he has answered my question and I would be content with what he has just said.

He has indicated what—

By The Court: He has indicated whatever he indicated.

232 By Mr. Sokol: That there was bad feeling as a result—

By The Court: No. I indicated to you to leave that alone, and when I indicate a thing like that to counsel I mean you to follow my suggestion.

By Mr. Sokol: I have no intention of disobeying the court.

By The Court: Then do as I say.

By Mr. Sokol: Very well. Excuse me just a moment. No further cross examination.

By Mr. Eben: I have a few questions.

Cross Examination by Mr. Eben.

Q. Mr. Ludmer, you have testified here pursuant to a subpoena served upon you by the Government, isn't that true?

A. Yes.

Q. What?

A. Yes, sir.

Q. And prior to testifying here you also testified before the Grand Jury, didn't you?

233 A. Not before the Grand Jury.

Q. Did you testify before a grand jury here in the Northern District of Illinois, the City of Chicago, at any time in connection with this case?

A. Not for a grand jury. Not for a grand jury.

Q. Did you testify in some other place in connection with this case?

A. I testified in some other place, yes.

Q. Where?

A. In Justice Department. I don't know what you call it.

Q. You mean a statement was taken from you, isn't that right?

A. Yes, that is right.

Q. Was that statement taken here in Chicago?

A. It was taken here in Chicago.

Q. Now, after these happenings which you have related on direct examination you moved to New York, I gather from your present address, is that true?

A. I didn't get that, sir.

Q. You say you live on Long Island now?

A. Yes.

Q. New Hyde Park?

A. Yes.

234 Q. When did you move there?

A. I moved there in December, '48.

Q. In December of 1948?

A. Yes.

Q. You were living in New York at the time these alleged conversations took place with Mrs. Treitler and Munio, isn't that right?

A. I was living in Seattle, Washington.

Q. Excuse me?

A. Seattle, Washington.

Q. You were living in Seattle and then you moved to New York, isn't that right?

A. Yes.

Q. When did you first come to this country?

A. In 1934.

Q. 1934?

A. Yes, sir.

Q. I assume you are a citizen?

A. That is right, sir.

Q. When did you take out your citizenship?

A. November, 1939.

Q. 1939. Now, after you moved to New York in December of 1948, did any officer or official of the Government call upon you relative to this particular case?

235 A. I didn't get it, sir.

Q. I will put it to you differently. When was the first time you talked with the Government about this case?

A. The first time?

Q. The first time.

A. The first time I spoke about this case to government officials was in New York.

Q. When?

A. Beg your pardon?

Q. When?

A. It would be sometime in July or August of 1948.

Q. 1948?

A. Yes.

Q. All right. That conversation took place in your home, didn't it?

A. No, sir.

Q. In your office?

A. No, sir. I went—

Q. In the office of a representative of the Immigration and Naturalization Service?

A. Right, sir.

Q. How did you happen to go to that office?

236 By Mr. Downing: I object, how he happened to go there.

By Mr. Eben: That goes to his credibility.

By The Court: He may answer.

By The Witness:

A. How did I—On my own free will.

By Mr. Eben:

Q. On your own free will?

A. That is right.

Q. The Government did not come to you, did they, first? You went to them first?

A. Right, sir.

Q. And at that time you told the Government the story substantially as you have related it here, isn't that right?

A. Yes.

Q. And you did that because you had made a demand on Munio Knoll for some money and he had refused to give it to you, and thereupon you said you would turn him in to the Immigration and Naturalization authorities, isn't that true?

A. No, this is not true.

Q. That is not true?

A. This is not true.

237 Q. All right. Nevertheless, you were the one who went to the immigration authorities?

A. Yes, sir.

Q. And I assume that when you went it was because of the great love you had for your new country, is that right?

A. I didn't get that right, sir.

By Mr. Eben: Repeat it, please.

(Question read.)

By The Witness: I don't get the question, sir.

By Mr. Eben:

Q. Why did you go? I will ask you a wide open question. Why did you turn Munio Knoll and these other people in?

A. I have not started that matter off. That matter was

started on the other side, and I was indirectly brought into the picture.

238 By Mr. Downing: If your Honor please—

By The Witness: If this is—I have to answer that way.

By Mr. Downing: He has answered it.

By Mr. Eben:

Q. Whom do you mean by the other side?

A. The witness will appear probably tomorrow, I believe.

Q. Who are they?

By Mr. Downing: Just a moment.

By The Witness: Am I supposed to speak for somebody else?

By Mr. Downing: Anybody that can testify will be here as a witness.

By Mr. Eben: It goes to his bias and partisanship.

By The Court: He says he did not start it. That has been exhausted.

By Mr. Eben: I did not hear your Honor.

By The Court: I said I think you have about exhausted the possibilities of it. He did talk to the Examiner of Immigration, but he said he did not start the matter.

By Mr. Eben:

239 Q. You say somebody else started it, isn't that true?

A. Yes.

Q. And do you know who that person was?

By Mr. Downing: I object. I say it is immaterial as far as this witness is concerned. He has admitted testifying and talking to the immigration officials, and I think that is as much as he can testify about.

By Mr. Eben: On the state of the record now he apparently of his own free will and voluntarily went down there. I would like to find out why and how.

By The Court: He says somebody else started it.

By Mr. Eben: If somebody else told him then I would like to pursue that if I may.

By The Court: Were you asked to go down to the immigration office?

By The Witness: I was called up from the party that had started that matter to the Government also to testify as far as I knew the things. So I went on my own free

240 will and testified.

By Mr. Eben:

Q. What I would like to know is, who is this party that called you up?

By Mr. Downing: I have no objection.

By The Court: Let him answer.

By Mr. Downing: If he knows.

By Mr. Eben:

Q. Who was that party?

A. Mr. Morris Haberman.

Q. Is he here in Chicago now?

A. He is in Chicago now.

Q. We will probably hear from him later.

By Mr. Downing: I object and ask it be stricken.

By The Court: Strike it out.

By Mr. Downing: And counsel should be warned about side remarks.

By Mr. Eben:

Q. Have you been promised a reward for your testimony here?

A. I have not been promised any reward. In what connection, sir?

241 Q. Has anybody promised you any money for your testimony, any reward?

A. No, sir.

Q. You know what a reward is, don't you?

A. I don't know that question exactly, into what way to answer. Is this expenses, governmental expenses?

Q. This isn't the first time—

A. I don't know that question.

Q. Have you finished?

A. Yes.

Q. Have you finished?

A. Yes, sir.

Q. This is not the first time you have turned people in to authorities, is it?

By Mr. Downing: Objection.

By The Court: Sustained.

By The Witness: Just a minute. What was that?

By Mr. Downing: Just a minute.

By The Court: Sustained.

By Mr. Eben:

Q. Did you reduce your statement to writing, the
242 statement that you made here today?

By Mr. Downing: Objection, unless he describes

where that statement was made and when. He may be talking about many things. The question is not definite.

By The Court: He may answer.

By Mr. Eben:

Q. Have you written out your statement?

A. Myself, this statement?

Q. Yes, sir.

A. No, sir.

Q. Beg your pardon?

A. Today?

Q. At any time.

A. I have given testimony.

Q. Have you ever written it out?

A. Myself, write it out?

Q. Yes, did you ever write it out?

A. No, sir.

Q. Did you have somebody else write it out for you?

A. The authorities wrote down whatever I—

Q. Who?

A. Wherever I gave the testimony, they wrote it down.

243 Q. Do you have in your pocket now any notes relative to your testimony?

A. No, sir.

Q. Nothing at all?

A. No, sir.

Q. Did you bring any here to this court house today with you?

A. No, sir.

Q. Didn't you memorize your testimony?

A. I don't know what—in what respect, memorize?

Q. Do you know what "memorize" means?

A. Yes.

Q. Did you memorize the testimony you were going to give here, and did give?

A. In what connection, have I got to answer that? I have a memory to remember things that happened.

Q. And did you commit what you were going to say here to memory?

By Mr. Downing: If your Honor please—

By the Witness: I don't know what "commit"—

By Mr. Downing: He has answered the question, and he says he had a memory and remembers it. Counsel is trying to badger the witness further and further—

244 By the Court: I think you have exhausted the possibilities. His testimony was not so elaborate that it had to be written down and committed to memory.

By Mr. Eben: May I have the court's indulgence for a second?

By Mr. Eben:

Q. You said that you came here in approximately 1934. By here I mean the United States. Is that right?

A. Yes, sir.

By Mr. Downing: Objection to this line of question, repetitious.

By the Court: Sustained.

By Mr. Eben: I am coming up to a thing.

By Mr. Eben:

Q. Prior to your coming here did you live in Berlin?

By Mr. Downing: I object to where he lived.

By the Court: Sustained.

By the Witness: What has that to do—

By the Court: Sustained. You don't need to answer that.

By the Witness: I am sorry.

By Mr. Eben:

245 Q. Isn't it a fact that prior to your coming here, and when you lived in Germany that you worked for the Gestapo?

By Mr. Downing: I object.

By the Witness: No, my goodness, I wish—

By Mr. Downing: I object.

By the Court: Sit down, and keep quiet when I—

By Mr. Eben: That is all.

Cross Examination by Mr. Bartoline.

Q. Mr. Ludmer, you testified that in February of 1948 you were present at a conversation where Marcel Lutwak was also present, is that correct?

A. Is this referring to that evening in the house of Regina Treitler?

Q. I am asking you whether that is what you testified to. Do you remember testifying here to that effect?

A. Just a minute.

By Mr. Downing: If your Honor please, I think the question is confusing. I think there is testimony about three or four different meetings. He is just now
246 asking about one conversation, with respect to a

particular month in which this man has testified about other meetings. I think of he wants a particular meeting—

By the Court: I think the question was warranted. If you want to really know what he knows I think it would be well for you to answer him; I think his inquiry of you was reasonable.

By Mr. Bartoline: Do you mean his inquiry of me, sir?

By the Court: Yes, sir.

By the Witness: What did he ask?

(The following answer was read by the reporter):

"A. Is this referring to that evening in the house of Regina Treitler?"

By Mr. Bartoline: Yes.

By Mr. Bartoline:

Q. Did you see Marcel Lutwak there?

A. Yes.

Q. How long was he there?

A. He was at least an hour to an hour and a half.

Q. He was there that long?

247 A. Yes.

Q. Was he present when these conversations were going on between Munio and Mrs. Treitler?

A. Yes, he was all the time, while they were arguing.

248 Q. Did he enter into the conversation at all?

A. He had an argument first, before Mr. Munio Knoll entered into that argument.

Q. Who had an argument?

A. Marcel Lutwak and Regina Treitler.

Q. Did you testify that Mareel asked you to go back to his house that evening?

A. That is right.

Q. And did you go?

A. After the argument quietened down some time later in the evening, yes, I went over.

Q. And you went with Marcel, isn't that correct?

A. Marcel and Munio Knoll after we left Regina Treitler's house.

Q. Where did you go?

A. To sleep over at Maria Lutwak's house.

Q. Now, how many times did you see Marcel from December of 1947 to the present date?

A. While I was in Chicago I have seen him most every day.

Q. You testified, however, to only two conversations, isn't that true?

A. I can see him and not have conversations.

Q. I am asking you whether that is the—

249 A. You asked me if I have seen him. I have seen him most every day.

Q. And you have had conversations with him on these occasions?

A. Conversations were going on from time to time.

Q. Did you ever see him in the apartment of Mrs. Lutwak, Maria Lutwak?

A. If I ever seen him?

Q. Yes, in the apartment of Maria Lutwak?

By Mr. Downing: If your Honor please—

By the Witness:

A. What Maria Lutwak?

By Mr. Bartoline:

Q. Mania. Do you know Mania?

A. Yes, Mania Knoll.

By Mr. Bartoline: I object, if the Court please. I asked him if he saw him in the apartment of Maria Lutwak.

A. Certainly, we used to come up there and sit and talk when her husband was present, when I was present, she would be present.

By Mr. Bartoline: That is all.

Cross Examination by Mr. Gerber.

250 Q. Mr. Ludmer, what is your relationship to the defendant, Munio Knoll?

A. My wife is their first cousin.

Q. Your wife is Munio Knoll's first cousin?

A. Right, sir.

Q. May I ask, how long have you been married to your wife?

By Mr. Downing: I object. What is the materiality of that?

By the Court: Sustained.

By Mr. Gerber:

Q. You have stated on direct examination that you overheard the conversation that you discussed at Mrs. Treitler's home in February of 1948, is that correct?

A. That is right. After the evening, when I returned from Seattle to Chicago.

Q. Did I understand you on cross examination by one of the counsel here, that at that time you had not had any business transactions with Munio Knoll?

A. The set-up was not perfected at that time.

Q. Had you had any business transactions with him up till that time?

A. It was all in a—

Q. May I have a yes or no answer?

251 By Mr. Downing: Just a minute.

By the Witness: I don't know how business transactions—it wasn't five minutes. It took a long time.

By Mr. Gerber:

Q. Had you had any business transactions with him up to that time, yes or no?

A. We contemplated to have a business.

Q. My question is simple.

By the Court: No, it is not simple.

By Mr. Downing: No, it is not.

By the Court: Had you talked business with him before that time?

By the Witness: We discussed several times of future business association.

By the Court: Had you consummated any deals prior to that time?

By the Witness: Not complete.

By Mr. Gerber:

Q. Had you engaged in any financial transactions in connection with these business deals with Munio Knoll prior to that time?

A. Just a minute. What was that?

To a certain extent, yes.

Q. To what extent? Don't you understand the 252 question?

By Mr. Downing: Just a minute. The witness is trying—

By the Witness: I don't know what to answer on that question.

By Mr. Gerber:

Q. I want to make it clearer.

A. I don't know, in what connection?

Q. You stated "to a certain extent." I am now asking you, to what extent are you talking about, when you say to a certain extent?

A. Because we had already taken a loft which was supposed to be fixed up for a future business. If this is the question I have to answer, I don't know what it means.

Q. Can you tell us to what extent you had engaged in any financial or business transactions with Munio Knoll preceding February of 1948 of any kind and description in connection with the business you have been talking about going into?

A. We were planning to get set up a business.

Q. Yes.

A. But nothing definite and nothing final was done because I could not find a way to get to an agreement, to come to an agreement.

Q. Were there any money transactions or financial transactions up to February of 1948?

A. Yes.

Q. What were they?

By Mr. Downing: Just a minute.

By the Witness: I don't know. In what—

By Mr. Downing: Money transactions can be passing a nickel back and forth. I think we are—

By Mr. Sokol: That is what we are trying to find out.

By the Court: Tell us in a general way. Tell us in a general way, what monetary transactions you had, if any?

By the Witness: Yes, I had received some money, but it was for merchandise that belonged to me and was sold, partly sold. It was some money I received, and the rest of the merchandise was still around.

254 By Mr. Gerber:

Q. Did Munio Knoll sign any instrument or undertaking to pay any obligations to your creditors for you prior to February, 1948, sir?

A. To a certain extent, he did.

Q. To what extent, please?

A. It was all my own money for my own sold merchandise, and I wish, if it were possible—

Q. I will repeat my question, please. Did Munio Knoll either pay to any of your creditors money which you owed your creditors, or sign notes or any other papers obligating Munio Knoll to pay any of those creditors any money you owed to those creditors prior to February, 1948? Did he or did he not?

A. Yes.

Q. Do you know approximately in what amount he assumed obligations of yours to your creditors at that time?

A. Well, it could be three or four thousand dollars.

Q. It was not \$12,000, was it?

A. No, sir.

Q. It was not more than three or four thousand, you say, is that correct, sir? Did I understand you right?

255 By Mr. Downing: His answer was about three or four thousand.

By the Witness:

A. I don't know. I have not got any papers on hand right now to quote exactly what it was.

By Mr. Gerber:

Q. If your memory was refreshed, you would be able to tell us?

By the Court: What is your best recollection? Let us get going. What is your best recollection as to the obligations, if any, Mr. Knoll, Munio Knoll, had incurred?

By the Witness:

A. Those obligations were only to perform his part, that he was going—

By Mr. Gerber: I ask that be stricken as not responsive. I asked him the amount of the obligations.

A. I don't know exactly the amount.

By the Court: What is your best recollection?

By the Witness:

A. Because he was immediately paid back for merchandise that was mine, and I don't know how it could be divided between my own money, and maybe to a certain
256 extent it was a part his money, but it was mostly money which was still mine for my own merchandise. I don't know how to divide it.

By Mr. Gerber:

Q. How much over and above the value of your merchandise did he assume of your obligations to creditors?

A. The value of my merchandise?

Q. Yes.

A. None.

Q. Let me put it this way: How much above the value agreed between you and Munio Knoll of your merchandise did he extend credit for you?

A. This could be eliminated because it is not the case, because—

Q. Will you answer my question? I would like the witness to be responsive.

By the Court: Just answer the question, and let this be the last question along that line.

By Mr. Gerber: Read the question.

(The last question was read by the Reporter.)

By the Witness:

A. None.

By Mr. Gerber:

Q. You have stated on your examination heretofore that you at no time did go into business with Munio Knoll, is that correct, sir?

A. That is right.

Q. Was there a loft or space rented for business by you or Munio Knoll at that time?

A. Yes, not rented definitely. He had just had the receipt to be rented.

Q. What address was that located?

A. 305 West Adams street.

Q. Was there machinery and merchandise moved in there for the operation of the business there?

A. Yes, sir.

Q. Did you both operate the business there?

A. Not operating it yet.

By Mr. Downing: Objection to any further questions along this line. I think he has pursued it far enough.

By the Court: I think you have. The only possibility of materiality would be to credibility, and he has told you they were angry with each other. So, what is the use of just spending all afternoon on it. Take up some other subject.

By Mr. Gerber: I am leading up to impeachment, your Honor.

258 By the Court: You cannot impeach on immaterial matter. I was telling you to take up some other subject.

By Mr. Downing: If your Honor please, I—

By Mr. Gerber: Go ahead. Do you want to make a statement?

By Mr. Downing: You conduct your lawsuit and I will conduct mine.

By Mr. Gerber: I just thought you wanted to make a statement. I didn't say anything out of line. I am trying to be polite.

By Mr. Gerber:

Q. Mr. Ludmer, when you went to the Immigration Office to, as you say, voluntarily report these people for violation, you have stated, have you not, that you had not made any demand on Munio Knoll for any money at that time, is that correct, sir?

A. That is correct.

Q. At what time did you go to the Immigration Office to report this matter?

By the Court: He never said he went to the Immigration Office to report it. He said that he went to the Immigration Office voluntarily, of his own free will, because somebody else had reported it to Mr. Haberman. That is what he said.

By Mr. Gerber:

Q. When you went to the Immigration Office, were you questioned on the first occasion?

By Mr. Downing: Objection, your Honor. I think we have gone over this question.

By the Court: Sustained.

260 By Mr. Gerber:

Q. Mr. Ludmer, will you please give us when it was when you went to the immigration office?

By Mr. Downing: I object to repetition, your Honor.

By the Court: Sustained. We have spent enough time on that.

By Mr. Gerber: I don't think the date was ever brought out.

By the Court: Somebody else has exhausted the possibilities of that.

By Mr. Gerber: What was the date?

By Mr. Downing: The record shows.

By Mr. Gerber: May I have the record? I would like to ask a question about it.

By Mr. Eben: July, 1948.

By the Court: July, 1948.

By Mr. Gerber:

Q. Did you know, Mr. Ludmer, that your wife had been corresponding with the defendant, Munio Knoll, before you went to the immigration office in July of 1948?

By Mr. Downing: Just a minute. Let us get this record straight. This is Mr. Ludmer.

261 By Mr. Gerber: I am sorry.

By Mr. Gerber:

Q. Mr. Ludmer, did you know at the time you went to the immigration office in July of 1948 that your wife had had a communication with the defendant Munio Knoll?

By Mr. Downing: I object to this.

By the Court: Sustained.

By Mr. Gerber: May I be heard on a matter I want to present, your Honor?

By the Court: Step into the jury room, Ladies and Gentlemen.

(The following proceedings were thereupon had out of the presence and hearing of the jury:)

By Mr. Gerber: If I may, your Honor, I would like to discuss this outside of the presence of this witness.

By the Court: Step into chambers.

(Witness retires from court room.)

By Mr. Gerber: If your Honor please, I have in my possession a letter with its envelope postmarked October, 1948.

That is subsequent to July, 1948, when he said he went 262 to the immigration office.

This letter is in the handwriting, and the envelope too, of this witness' wife. It is written in German, and it can be interpreted.

In this letter she tells my client, Munio Knoll, unless in eight days' time he hands over \$15,000, she is going to turn him over to the immigration office.

By Mr. Downing: That is not this witness—

By Mr. Gerber: Now let me talk.

Your Honor, I am only saying this, I am only asking the witness if he had any knowledge of a communication by his wife. I am trying to discover whether he inspired writing anything to him. I am trying to discover if he had any knowledge of the alleged blackmail.

If he has, it has something to do with the bias and prejudice that he is showing here.

This letter is absolutely evidence of blackmail, nothing more. I think we ought to go into this matter on behalf 263 of these defendants.

By the Court: Have you seen this letter?

By Mr. Downing: No, sir, I have never heard of it.

By Mr. Eben: It is in German.

By Mr. Gerber: I can have it interpreted.

By Mr. Sokol: Possibly Mr. Lawson can interpret it.

Can you interpret it?

By Mr. Lawson: No.

By the Court: Ask the witness to come in.

(Thereupon the witness returns to the court room.)

By the Court: Ask him about it in the absence of the jury.

By Mr. Gerber:

Q. Do you know your wife's handwriting?

A. Yes, sir.

Q. I direct your attention to Defendant Munio Knoll's Exhibit marked 1, which is the letter, and 1-A, the envelope, for identification.

(Said document marked Defendant Munio Knoll's Exhibit 1 and 1-A for identification.)

By Mr. Gerber:

264 Q. Right now I ask you merely to look at it and tell us by looking at the handwriting whether that is her handwriting?

A. Yes, sir.

Q. Is that your wife's handwriting?

A. Yes.

Q. Is that her signature at the bottom of it?

A. Yes, sir.

Q. Do you know of any letter that she wrote to Munio Knoll during the month of October, 1948?

A. I don't know.

Q. I ask you to look at Defendant Munio Knoll's Exhibits marked 1 and 1-A for identification.

Do you read German?

A. I do.

Q. And ask you to read these and tell us whether you ever saw this letter, or whether you were present when it was written, or asked it to be written.

By the Witness: Since this letter has been brought out, your Honor, can I bring this issue up freely?

By the Court: Yes.

265 By the Witness:

A. We were very bitterly hurt by Mr. Romankiewicz. Mr. William Knoll, who is a first cousin of my wife, tried to entrust to him a lot of merchandise which he has plundered away from us, and we were very bitter and left very destitute. May I read the letter that the wife wrote?

By Mr. Downing: Just a moment on that. He has a letter, I believe. Is that the letter you showed me last night?

By the Witness: That is right.

By Mr. Downing: He has a letter from some other people concerning transactions—

By the Witness: That has nothing to do, either.

By Mr. Downing: There is a transaction with Mr. Munio Knoll and Mr. Ludner. Now, that is in English. That is quite clear, but this whole proposition, your Honor, I submit that they have gone into and opened the door to something I have very carefully avoided for two or three reasons. First of all, I think we are going to be permitted, inasmuch as they have gone to the extent that they have, to go to 266 some of the conversations, the rest of the conversations that this man has had with Regina Treitler and Munio Knoll about this entire transaction. Now, there has been characterizations made by Regina Treitler at some of these conferences or meetings that he has previously mentioned about this business relationship, characterizations by Regina Treitler or Munio Knoll about this entire business relationship, which I have studiously attempted to keep out of the case. I felt if the Government introduced that it would be prejudicial. There was name calling by all of them. I have attempted to avoid this whole issue, and it is a point I wanted to discuss some time ago out of the presence of the jury. Now, I submit, your Honor, if this thing proceeds, if they continue, that even on the state of the record at the present time, we probably have a right to go into the rest of the conversations about all these business relations.

By Mr. Gerber: Does counsel want me to refrain from showing blackmail? He is telling me if I persist he will do something. I think it is my duty to call it to your attention.

267 By the Court: It may be your duty, but you lawyers must think about it before a jury.

By Mr. Sokol: If the Court please, I would like to say something in connection with what Mr. Eben has suggested. I cannot readily agree at this stage that anyone can take the position, because this letter has been used to question this witness, that the door has been thrown wide open to anything, which Mr. Downing has chosen to keep out. Now, we are still confronted with the materiality. Merely because he has stated that certain facts, or something would not be proper for the Government to introduce, does not mean that Mr. Gerber is trying to shut the door. There have been some preliminary questions, and from those questions it is inferred why he did certain things. Now, what Mr. Gerber

is intending to show now, there was some attempt made to blackmail, if you please, or extort some money. Now, that has nothing whatever to do with what Mr. Downing has alluded to as conversations with Mrs. Treidler. It is collateral, and it has nothing to do with this matter.

By Mr. Gerber: Your Honor, may I say one thing further, in brief?

268 Your Honor, I am prepared to show—your Honor has stopped me now—but I will do it on my own case, if I have to. I am prepared to show that my client loaned him many thousands of dollars, and there was a business relationship, but this man ultimately sold out, and I have got all the documents which will show that, your Honor, and at the proper time, I will do it, your Honor, but this has to do with something else. This has to do with the credibility of the witness.

By Mr. Downing: It doesn't have to do with the credibility of this witness. The witness wants to say something to the Court.

By the Court: Go ahead.

By the Witness. Right now, the way things have gone, it seems to me I need counsel.

By the Court: Oh, no.

By the Witness: I don't need counsel, your Honor?

By the Court: No.

By the Witness: Because I have enough to talk about because you may infer I am trying to implicate these people.

269 By the Court: Wait a minute. Listen to me.

By the Witness: Yes, your Honor.

By the Court: All you have got to do is be cool, calm and collected and listen to the questions put to you and answer fully and freely and honestly, and nothing else, and you won't have any trouble.

By the Witness: Your Honor, may I ask one more question, because one of the attorneys has mentioned before a very insulting remark. He put a question to me, I don't remember exactly which of the gentlemen did it. I had no counsel to object.

By the Court: Well, you said it didn't happen, and I believe it. Sit down.

Now, that letter has nothing to do with this case unless you prove that this man knew it was going to be sent. Now, ask him that question.

By Mr. Gerber: I did ask him that question.

By the Court: No, you did not.

By Mr. Gerber: I asked him if he knew his wife had communicated with the defendant Munio Knoll.

By the Court: No, the question you asked him, if he knew that letter was going to be written.

270 By Mr. Gerber: Do you want me to ask the question?

By the Court: Yes, if you want to. If you don't want to, we will proceed.

By Mr. Gerber: No, I didn't mean that.

Q. Referring again to the exhibit of Munio Knoll, marked 1 and 1-A, respectively, for identification, I ask you, did you know that this letter was sent to him?

A. I didn't know.

Q. Did you know it was going to be sent to him?

A. I did not.

Q. Did you have any conversations with your wife relative to the sending of such a letter to him?

By the Court: Before it was sent.

By the Witness: No.

By Mr. Downing: I think that exhausts that subject, your Honor.

By the Court: That is all there is to it.

By Mr. Gerber: Isn't it proper for me to ask if she ever discussed this letter with him?

By Mr. Downing: Objection.

By the Court: No, I don't care about that.

By Mr. Gerber: May I ask this?

By Mr. Downing: Objection to any more questions
271 about this letter.

By Mr. Gerber: As a matter of convenience, counsel, I may want to subpoena the wife. May I now ask him where I can find her?

By Mr. Downing: Oh, no.

By the Court: No. Bring in the jury.

(The following proceedings were had in the presence and hearing of the jury:)

By Mr. Gerber: I have only one more question, your Honor.

By Mr. Gerber:

Q. At the time, Mr. Ludmer, that you went to the immigration office as you testified, your business relationship had terminated with Munio Knoll then, is that right?

A. Yes, sir.

By Mr. Downing: Objection, your Honor.

By the Court: Sustained. I told you to take up some other subject.

By Mr. Gerber: I am leading up to my question.

Q. You were bitter against—

By Mr. Downing: Objection, your Honor.

By the Court: Sustained.

272 By Mr. Downing: I ask that he be cautioned not to go into that matter again.

By Mr. Gerber:

Q. Were you friendly—

By the Court: Sustained.

By Mr. Gerber: That is all.

By the Court: Any further questions?

By Mr. Sokol: No further questions.

By Mr. Downing: Just one or two questions, Mr. Ludmer.

Redirect Examination by Mr. Downing.

Q. I believe on cross examination you mentioned the fact that at this Regina Treitler's apartment, when you previously mentioned Regina Treitler and Munio and Marcel were there and Marcel had an argument. I don't believe you did tell us what was said by Marcel at that time. Will you tell us what Marcel said at that particular time in Regina Treitler's apartment?

A. When Marcel came into Regina's house—

By Mr. Eben: It is understood this is subject to the running objection, so far as Léopold Knoll is concerned.

By the Court: Yes.

273 By the Witness:

A. They immediately opened up the argument.

By Mr. Downing:

Q. Tell us what Marcel said, and what anybody else said, about what Marcel said.

A. There were first insults thrown against one another.

Q. Tell us about this matter that was discussed at that particular time.

By Mr. Sokol: Your Honor, that is repetition. He has already answered the question.

By the Court: No, he has not. He did not tell about Marcel saying anything.

By Mr. Downing:

Q. Did Marcel say anything about this matter you previously testified that was discussed between Munio and Regina at that place?

A. Marcel entered the conversation only when it was opened up after Munio Knoll showed up.

Q. Did Marcel have anything to say about that matter in your presence at that time?

A. No.

By Mr. Downing: I believe that is all.

By Mr. Sokol: That is all.

274 By Mr. Eben: No recross.

By the Court: You may step down.

(Witness excused).

. . .

494

United States of America
vs.

Munio Knoll alias Zygmunt Roman-
kiewicz, Marcel M. Lutwak, Regina
Treitler, Leopold Knoll, and Grace
Klemtner alias Grace Klemtner Knoll

50 CR 464

Chicago, Illinois,
January 11, 1951,

10:10 o'clock a.m.

Met pursuant to adjournment.

Present:

Mr. Downing

Mr. Owen

Mr. Gerber

Mr. Bartoline

Mr. Sokol

Mr. Eben

Mr. Watt

Mr. Weissbourd

And thereupon the following further proceedings were
had herein:—

506 By Mr. Downing: Jane Turner.

JANE TURNER, called as a witness, on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Downing.

Q. Will you state your name, please?

A. Jane Turner.

Q. What is your address, Miss Turner?

A. 116-1/2 South Bonnie Brae, Los Angeles.

Q. What is your occupation?

A. I am a student.

Q. Where are you a student?

A. Los Angeles City College.

Q. Do you know the defendant Leopold Knoll?

A. Yes, I do.

Q. Do you see him in the court room?

A. Yes, I do.

By Mr. Dowling: May the record show the witness has identified the defendant Leopold Knoll in the court room.

Q. When did you first meet Leopold Knoll, approximately when, as best you recall?

507 A. In December of 1947.

Q. Where?

A. In New York.

Q. Who else was present?

A. Mrs. Knoll and Mr. Lutwak and I suppose Mr. Knoll's brother.

Q. Do you recall, was that Munio Knoll or Zygmunt Romankiewicz?

A. Yes.

By Mr. Gerber: I object to that because she said she supposes. I ask that be stricken.

By the Court: She now said "Yes". Motion denied.
By Mr. Downing:

Q. With respect to the person identified as Mrs. Knoll, was she formerly known as Grace Klemtner to you?

A. Yes.

Q. With respect to Grace Klemtner, when did you first meet her?

A. In 1945.

Q. Where at?

A. In Florida.

Q. Were you in the United States Army with her
508 at that time?

A. Yes, I was.

Q. Subsequent to that date and after you were discharged from the United States Army, did you commence to reside with Grace Klemtner?

A. Excuse me. I made a mistake on that date. It was in 1943.

Q. 1943?

A. Yes.

By Mr. Downing: Will you read that question again, Mr. Reporter?

(The following question was read by the Reporter:

"Q. Subsequent to that date and after you were discharged from the United States Army, did you commence to reside with Grace Klemtner?")

By the Witness:

A. Yes.

By Mr. Downing:

Q. Where at?

A. In Chicago.

Q. What was the address?

A. 2501 North Avers.

Q. In whose home was that?

509 A. Her mother's.

Q. From approximately what date and until approximately what date did you reside at that residence?

A. I lived there from 1945 to—1946 until 1947.

Q. Approximately what portion of the year 1947 did you last reside at that address?

A. In December.

Q. To your knowledge, did Grace Klemtner go to Paris, France?

A. Yes, she did.

Q. Approximately when, as best you recall?

A. In December of 1947.

Q. And what was the day of the week, do you recall that?

A. No, I don't.

Q. Do you recall approximately what time of the day she left?

A. She left in the evening.

Q. And from where did she leave?

A. From the airport.

Q. That is the Chicago Municipal Airport?

A. Yes.

Q. Did you see her board the plane and the plane depart from the Chicago Municipal Airport at that time 510 and place?

A. Yes, I did.

Q. And thereafter, when did you next see Grace Klemtner?

A. I saw her in New York when she returned.

Q. That is the meeting you have previously referred to, is that right?

A. Yes.

Q. And at that time the people you mentioned were present when you next saw her, is that right?

A. Yes.

Q. Did you have any conversation with the persons that you have identified at the time you next saw Grace Klemtner?

A. Only with Grace.

Q. Were the other persons present at that time?

A. Yes, but they didn't speak English.

Q. What was said at that particular time?

By Mr. Eben: Objected to, on the basis of what the witness said. They cannot give any conversation, even though in their presence, if in fact they did not speak English and did not understand English.

By Mr. Downing: There is no basis for saying they 511 did not understand English. All she said was that they did not speak English. That may be knowledge based upon some facts this witness has. On the other hand, there is no basis for saying the people did not understand English.

By Mr. Eben: That would be incumbent on the District Attorney to prove, and not upon us, particularly in view of the fact—

By Mr. Downing: The conversation was before these people, and is proper.

By Mr. Eben: It might have been in any one of many languages.

By Mr. Downing: That goes to its weight.

By Mr. Eben: It could not be admissible if they did not understand it, and there are a score of cases on that. I cite *Territory vs. Big Knot On The Head*.

By the Court: Don't get agitated. Just be calm, cool and collected, and let me think while you are talking.

By Mr. Eben: Certainly.

By the Court: Who was present at this time?

By the Witness: Mrs. Knoll and Leopold and his brother and Mr. Lutwak.

512 By the Court: By Mrs. Knoll, you mean whom?

By the Witness: Grace Klemtner.

By the Court: Step into the jury room, ladies and gentlemen.

(Whereupon the following proceedings were had out of the presence and hearing of the jury:)

By the Court: Let me hear what she is going to say, and then I can tell something more about it.

By Mr. Downing:

Q. Will you relate to the Court what conversation you had at that particular time and place?

A. It wasn't any momentous conversation. I asked if she enjoyed her trip, and I said, "How do you do?" to the people I was introduced to, and that is about all.

Q. She introduced you to the people at that time, is that right?

A. Yes, she did.

Q. Did she identify the persons, as to who they were?

A. No, just by name.

By Mr. Downing: I will withdraw the question. There is not enough to the question.

By the Court: Very well. Is there any other question likely to come up?

By Mr. Downing: No.

By the Court: Very well. Bring in the jury.

(Whereupon the following proceedings were had in the presence and hearing of the jury:)

By the Court: You may proceed.

Ladies and gentlemen, the pending question was withdrawn.

By Mr. Downing:

Q. After meeting this group in New York at the airport, where did you then go?

A. I went to the Governor Clinton Hotel.

Q. With whom did you go?

A. With Grace.

Q. Was that the Governor Clinton Hotel in New York City?

A. Yes.

Q. How long did you stay at the Governor Clinton Hotel?

A. Approximately three days.

Q. That is, after you met this group?

A. Yes, sir.

Q. By the way, where did you meet them in New York?

A. At the airport.

514 Q. Was that the La Guardia airport?

A. Yes.

Q. While you were at the Governor Clinton Hotel, who resided with you at that hotel?

By Mr. Eben: Objected to as being a matter that arose after the alleged conspiracy had terminated, upon their arrival in New York.

By the Court: Overruled. She may answer.
By the Witness:

A. Grace stayed with me at the hotel in New York.

By Mr. Downing:

Q. That is Grace Klemtner, is that right?

A. Yes.

By Mr. Eben: May I also have a running objection to the balance of the testimony occurring after the arrival in New York?

By the Court: Yes.

By Mr. Downing:

Q. After you left the Governor Clinton Hotel in New York, where did you go?

A. To Chicago.

Q. With whom did you go?

A. With Mrs. Knoll.

Q. That is Grace—

515 A. Yes.

Q. Grace Klemtner?

A. Yes.

Q. How did you come to Chicago?

A. By train.

Q. Who paid for the transportation to Chicago?

A. I did.

Q. Did Leopold Knoll reside at the Governor Clinton Hotel with Grace and you at that time that you resided there?

A. No.

By Mr. Eben: Objected to as immaterial.

By the Court: Overruled.

By Mr. Downing:

Q. Did Leopold Knoll accompany you from New York to Chicago at the time you came to Chicago with Grace Klemtner?

A. No, sir.

Q. How long did you remain in Chicago at that time?

A. Just one day.

Q. With whom did you reside in Chicago?

A. I stayed at a friend's house.

Q. Who stayed with you?

A. Grace.

516 Q. Where, do you recall approximately where the friend's house was located?

A. On Grand avenue and Wabash.

Q. Did Leopold Knoll stay there at that time?

A. No, sir.

Q. Thereafter, where did you go?

A. To Los Angeles.

Q. And with whom did you go?

A. With Mrs. Knoll.

Q. That is, Grace Klemtner?

A. Yes.

Q. And approximately what date was that that you went to Los Angeles?

A. About the 11th or 12th of December, 1947.

Q. This was in 1947?

A. Yes.

Q. Who paid for the transportation to Los Angeles?

A. I did.

Q. Did Leopold Knoll accompany you to Los Angeles?

A. No.

Q. Did you thereafter commence to reside in Los Angeles?

A. Yes.

Q. And with whom?

517 A. Mrs. Knoll.

Q. And where in Los Angeles did you reside?

A. We had two apartments.

Q. Do you recall the addresses, and how long did you stay at each of them?

A. 4358 Sixth avenue, for about ten months; and the Bonnie Brae address.

Q. That is the one at 1161 1/2 Bonnie Brae?

A. Yes.

Q. At both places, did Grace Klemtner reside with you?

A. Yes.

Q. Under what name did she live at that place?

A. She lived under the name of Klemtner, but she received mail under both names.

Q. She lived under the name of Grace Klemtner, but she received mail under the name of Grace Klemtner and what other name?

A. Mrs. Knoll.

Q. Mrs. Knoll. Has Grace Klemtner resided with you in Los Angeles from December, 1947, up until the present time?

A. Yes.

Q. Has Leopold Knoll ever resided with you and 518 Grace Klemtner at those addresses in Los Angeles?

A. No, sir.

By Mr. Downing: You may cross examine.

By Mr. Sokol: No cross examination.

Cross Examination by Mr. Eben.

Q. Miss Turner, when you met Mrs. Knoll and her husband, Leopold Knoll, in New York, he was sick, wasn't he?

By Mr. Downing: Objection, your Honor, as to how she could tell whether he was sick.

By the Court: She may answer.

By the Witness:

A. Grace told me that he was ill.

By Mr. Eben:

Q. He had a bad leg, isn't that right?

A. Yes.

Q. And at that time he needed hospital or doctor's care in connection with that leg, didn't he?

By Mr. Downing: Objection, your Honor. I think that is beyond—

By the Court: She may answer, if she knows.

By the Witness:

A. Grace discussed with me that he did need—

519 By Mr. Eben: Excuse me—

By Mr. Downing: I object to any discussion between Grace—

By the Court: All you know about it is what Grace told you?

By the Witness: Yes, sir.

By the Court: Sustained.

By Mr. Eben:

Q. After you went to California, Mrs. Knoll received letters from Mr. Knoll, didn't she?

A. Yes.

Q. And she received money from him from time to time, didn't she?

A. Yes.

By Mr. Eben: That is all.

By Mr. Downing: No redirect examination.

That is all: You may step down.

(Witness excused).

520 By Mr. Downing: Mrs. Wicker.

NETTIE WICKER, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Downing.

Q. State your name, please.

A. Mrs. Louis Wicker.

By the Court: Your name.

By the Witness: Nettie.

By the Court: Nettie Wicker?

By the Witness: Yes, sir.

By Mr. Downing:

Q. What is your address, Madam?

A. 6070 Stony Island.

Q. Chicago, Illinois?

A. Yes, sir.

Q. Do you have any occupation or are you a housewife?

A. Housewife.

Q. Are you acquainted with the defendant Zygmunt Romankiewicz?

521 A. Yes, sir.

Q. Are you acquainted with the defendant Regina Treitler?

A. Slightly.

Q. Do you see them in the court room?

A. Yes, sir.

By Mr. Downing: May the record show the witness has identified the defendant Zygmunt Romankiewicz and the defendant Regina Treitler in the court room.

By Mr. Downing:

Q. Directing your attention to the property at 3345 West Maypole Street in Chicago, do you and your husband own the property there?

A. Yes, sir.

Q. Did you ever talk to the defendant Regina Treitler regarding the renting of an apartment at that address?

A. Yes, sir.

Q. Approximately when as best you recall?

A. About Christmas of 1947.

Q. Christmas of 1947?

A. Yes, sir.

Q. And thereafter did you show the apartment to 522 the defendant Regina Treitler?

A. Yes, sir.

Q. Who else was along at that time, as you recall?

A. Maria Lutwak and Zygmunt, and I believe Marcel, and there were quite a few people, but I don't recall now.

Q. There was Maria and Zygmunt and Marcel, is that right?

A. Yes.

By the Court: Maria who?

By the Witness: Maria Lutwak.

By the Court: And who else?

By the Witness: And Zygmunt.

By Mr. Downing: Zygmunt.

By the Court: And who else?

By the Witness: Marcel.

By Mr. Downing:

Q. Was Mrs. Treitler there?

A. Yes.

Q. And was that on the same day that you had talked to Mrs. Treitler about renting the apartment, around Christmas of 1947?

A. Yes, I believe she called me up a few hours earlier.

523 Q. And did the people take the apartment at that residence at that time?

A. Yes, sir.

Q. What floor was this apartment located on?

A. Third floor front.

Q. What was the size of the apartment?

A. Three-room apartment.

Q. Will you describe what type of rooms they were?

A: ~~Yes~~. Large bed room, a large living room, kitchen and bath room.

Q. And to your knowledge after the people rented the apartment, who lived there?

A. Well, I used to come up during the day, I would see Maria there, I would also see Marcel and Zygmunt.

Q. Zygmunt, and did you see Marcel and Maria?

By Mr. Eben: I would like to interpose an objection on behalf of my client Leopold Knoll that any acts or declarations that presumably will come from this witness would not be admissible against him on the grounds, first, that he is not bound by them and, secondly, that it was after the arrival here in this country.

524 On the first ground it seems clear to me he ought not be bound by anything done by the others, at this stage in any event.

By the Court: What do you say?

By Mr. Downing: I submit, your Honor, that it is admissible against all of them at this stage of the evidence. Certainly acts and declarations of one are admissible against the others. I think there is sufficient evidence in here, in view of the record to date, and it is admissible against all of them.

Three of them were there when they went to rent the place, Marcel, Munio and Mrs. Treitler were there when they went to rent it.

By Mr. Eben: Not Leopold.

By Mr. Downing: There was a group there when they went there.

By Mr. Eben: I don't care if they had an army, if Leopold was not there.

By Mr. Downing: At this time this is admissible against all of them.

By the Court: Step into the jury room, will you, please, Ladies and Gentlemen?

525 (Whereupon the following proceedings were had out of the presence and hearing of the jury:)

By the Court: Does anybody have a transcript of the testimony of Anne Zapler here?

By Mr. Downing: Yes, your Honor, I have it.

By the Court: May I see it?

By Mr. Downing: Yes. (Handing transcript to the court.)

By the Court: What is the present question, and the objection?

(The desired portion of the record was read by the reporter.)

By the Court: Objection overruled.

Bring in the jury.

I think on the present state of the record the testimony of Mrs. Zapler is admissible against all of the defendants. That will be the ruling.

By Mr. Downing: Will the jury be so informed?

By the Court: The jury will be so instructed. Bring in the jury.

526 (Whereupon the following proceedings were had in the presence and hearing of the jury:)

By the Court: Ladies and Gentlemen, when the witness Anne Zapler was on the stand she was the first witness who testified.

She testified to certain conversations with Mrs. Treitler, and certain conversations with Marcel Max Lutwak.

At that time I admitted the conversations which the witness Anne Zapler had with Regina Treitler as against Regina Treitler only, and I admitted the conversations which the witness Zapler had with Marcel Max Lutwak against Max Lutwak only.

Upon the present state of the record I think, and I rule, that those conversations were admissible and shall be received and considered by you as against all of the defendants.

The present objection is overruled.

Proceed.

By Mr. Gerber: May I note exception to that ruling
527 in the record, on behalf of Munio Knoll?

By the Court: Yes.

By Mr. Downing:

Q. At the time you met Maria what was the last name that she was introduced to you as?

A. Mrs. Lutwak.

528 Q. Who paid the rent at this apartment?

A. Mrs. Lutwak.

Q. How long did she pay the rent?

A. About two months.

Q. Thereafter, who paid the rent?

A. Zygmunt Romankiewicz took the apartment. He was going to pay the rent.

By Mr. Eben: For the purpose of protecting my record, your Honor, I would like the record to show I have a continuous objection.

By the Court: Very well.

By Mr. Eben: To these acts, declarations and conversations.

By the Court: Objection overruled.

By Mr. Eben: Thank you.

By Mr. Downing:

Q. Thereafter, if you know, did Zygmunt Romankiewicz live at this residence as long as they have rented the property from you?

A. Yes, sir.

Q. Until what date was that approximately?

A. About April of 1949.

Q. April of 1949?

A. Yes, sir.

529 Q. Thereafter, if you know, where did the defendant Zygmunt Romankiewicz reside?

A. On East 61st Street.

Q. At what address?

A. 1500 East 61st Street.

Q. Approximately how long did he reside at that address as best you can recall?

A. A few months.

Q. Do you know where he resides at the present time?

A. 6068 Stony Island Avenue.

Q. Approximately what date did he commence to reside at that address?

A. I don't remember.

Q. Would you say—Pardon me, were you going to say something?

A. I would say about the summer of 1949.

Q. The summer of 1949?

A. Yes.

Q. Do you own that property, you and your husband own that property?

A. Yes, sir.

Q. And he is still residing there, is he?

A. Yes, sir.

530 Q. Is he employed by Mr. Wicker and yourself?

A. Yes, sir.

Q. Approximately how long has he been employed by Mr. Wicker and yourself?

A. About a year and a half, I would say.

Q. What is the nature of his duties at the present time?

A. Well, he works as an all around man and manages the property.

Q. Now directing your attention to the summer of 1948, were you at South Haven, Michigan?

A. Yes, sir.

Q. Did the defendant Zygmunt Romankiewicz in company with others visit your place at that particular location?

A. Yes, sir.

Q. With whom was he at that time?

A. With Maria.

Q. That is the Maria you have previously identified?

A. Yes, sir.

Q. Who else, if you recall?

A. Another couple, friends of theirs.

Q. Do you recall their names?

A. Weisman.

531 Q. Is that David Weisman?

A. I don't know the first name.

Q. Did the defendant Zygmunt Romankiewicz and Maria remain overnight at your home there?

A. Yes, sir.

Q. Did they share the same room together while they slept?

A. Yes, sir.

Q. I now show you a document which is identified as Government's Exhibit 25 marked for identification and I ask you to look at that, and ask you if you have seen that before.

A. Yes, sir.

Q. With respect to this photograph, I ask you if your picture is included in that group?

A. Yes, sir.

Q. Do you know where that was taken?

A. At the Sherman.

Q. At the Hotel Sherman here in Chicago?

A. Yes, sir.

Q. Do you recall approximately when that was?

A. No, I cannot remember.

By Mr. Downing: You may cross examine.

532 By Mr. Eben: No cross examination, on behalf of my client.

By Mr. Sokol: No cross examination, if the Court please.

By Mr. Gerber: No cross, your Honor.

By Mr. Bartoline: I just want to ask one or two questions.

Cross Examination by Mr. Bartoline.

Q. When did Maria leave the apartment on Maypole Avenue, do you know?

A. I cannot remember, but when Mr. Romankiewicz called me and told me he had taken the apartment, Maria left.

Q. Do you know where she went?

A. No, he just said he was taking over the apartment, and there was nobody there but himself.

By Mr. Bartoline: That is all.

Redirect Examination by Mr. Downing.

Q. Thereafter, did Maria return to that apartment?

By Mr. Gerber: Objected to as not proper redirect.

533 By the Court: Overruled.

By Mr. Downing:

Q. Do you recall, did Maria return thereafter?

A. Yes.

Q. Approximately when was that?

A. Oh, a few months later.

Q. Then approximately how long did she reside there at that apartment?

A. I don't remember. A short while.

Q. Was it a period of say three or four months?

A. It must have been two or three months.

By the Court: What is the answer?

By the Witness: Two or three months.

By the Court: Speak up.

By Mr. Downing: Speak up so that the jury can hear you please.

By Mr. Downing:

Q. Was she residing there at the time Maria and the defendant Zygmunt Romankiewicz and the Weismans came to your place at South Haven, Michigan, in the summer of 1948?

A. Yes, sir.

Q. It was after she had left the first time, is that right?

534 A. I think so.

Q. Can you recall that?

A. Yes, it was after.

Q. That was after she came back?

A. Yes.

Q. With respect to Government's Exhibit 25 marked for identification, was Maria present at the time this photograph was taken?

By Mr. Eben: That is objected to. It is obviously not redirect.

By the Court: I think it is in view of the cross. Overruled.

By Mr. Downing:

Q. Was this prior to the period of time that Maria had returned and was residing there the second time?

A. I don't remember.

Q. Well, to refresh your recollection, was this in about June of 1948?

A. Yes, about that.

Q. That then was the second time that Maria had resided there, is that right?

A. Yes, sir.

By the Court: What is the answer? Speak, Madam.

535 By the Witness: Yes, sir.

By Mr. Downing: That is all.

By Mr. Gerber: No cross.

By Mr. Eben: No cross.

By Mr. Downing: Thank you.

(Witness excused.)

GEORGE GROTHE, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Downing

Q. Will you state your name, please?

A. George Grothe.

Q. Your address?

A. 5801 North Mason Avenue, Chicago.

Q. What is your business or occupation, sir?

A. I am custodian of the records of the First National Bank, Chicago.

Q. How long have you been employed by The First National Bank, Chicago?

A. Twenty-six years.

Q. Just briefly, will you describe to the court and 536 jury the nature of your duties at the bank?

A. Well, I am connected with the auditing department of the bank, and in that capacity we have control of all records; after the current records are finished; we have control of the older records.

Q. So you are custodian of the records of The First National Bank, is that right, sir?

A. That is correct.

Q. Now, was The First National Bank of Chicago subpoenaed to produce certain records and signature cards of the defendant Marcel Max Lutwak, 1947, and their ledger sheets?

A. Yes, sir, they were.

Q. Do you have those with you?

A. I do.

By Mr. Downing: Will you mark this Government's Exhibit 20?

(Document so marked for identification.)

By Mr. Downing:

Q. Now, directing your attention to Government's Exhibit 20 and Government's Exhibit 21, each marked for identification, I ask you to look at those and ask you if those are the records you have produced in response to that subpoena?

A. Yes, they are.

Q. With respect to each of these records, Government's Exhibit's 20 and 21, marked for identification, are they the records of the First National Bank of Chicago?

A. Yes, sir, they are.

Q. Were those records prepared in the regular course of business at the bank?

A. They were.

Q. Was it the regular course of business of the bank to prepare such records at the time they were prepared?

A. What is that question?

By Mr. Downing: Read the question.

(Question read).

By The Witness:

A. Yes.

By Mr. Downing:

Q. Are these records in your custody at the First 538 National Bank of Chicago at the present time?

A. Yes, sir, they are.

Q. Now, directing your attention to Government's Exhibit 21, will you explain to the Court and jury by whom that was prepared?

A. This is a transcript of the account of Marcel M. Lutwak for the months of October, November and December, 1947, and they were prepared by me from a microfilm.

Q. Does the microfilm contain the microfilm of the original ledger sheet of that account?

A. Yes, sir.

Q. Did you personally withdraw the data which is contained in that exhibit, or did you have Government's Exhibit 21, will you explain to the Court and jury by whom

A. I did.

Q. And is Government's Exhibit 21 marked for identification a true and correct transcript of the microfilm, the original of the ledger sheet of Marcel M. Lutwak?

A. Yes, it is.

Q. With respect to Government's Exhibit 20, marked for identification, will you explain briefly to the Court and jury what that document is?

539 A. It is the signature card of Marcel M. Lutwak.

Q. Was that document received in the regular course of business at the First National Bank of Chicago?

A. Yes, sir, it was.

By Mr. Downing: If your Honor please, at this time, I would like to offer in evidence Government's Exhibits 20 and 21, marked for identification, and ask leave of court to substitute a photostatic copy of Government's Exhibit 20 and return the original to the witness.

By Mr. Eben: I have no objection to any substitution of a photostat, but I do object to either of these exhibits, and I am referring to Government's Exhibits 20 and 21 for identification as being inadmissible against Leopold Knoll, on the ground that I stated before, that the acts and declarations of Lutwak are not admissible against him. That is, in connection with the conspiracy, there is nothing shown.

I am not inclined to make any objection, however, on the ground of the genuineness of Government's Exhibit 21, although it appears that it is objectionable without bringing in the original photostats or microfilm.

540 By Mr. Downing: Of course, we can't bring in the film and the shadow box.

By Mr. Eben: I have no objection on that score.

By Mr. Gerber: I would like to make the same objection on behalf of Munio Knell, your Honor.

By Mr. Sokol: I do not care to make any specific objection, your Honor, but I want to make certain, on behalf of Regina Treitler, that any objections made with respect to the materiality and admissibility that are made by other defendants may be considered as made on behalf of my client.

By The Court: You had better indicate your objection, then.

By Mr. Sokol: Very well. I make a similar objection.

Mr. Bartoline: I won't object to these.

By The Court: Let me see them: What is the materiality?

By Mr. Downing: If your Honor please, there are withdrawals on that ledger sheet, two withdrawals, in the amount of \$1,000, one dated October 30th, and the other dated November 17th, 1947. The exhibit, 14, which is Government's Exhibit 14, one of the transcripts which 541 was admitted yesterday in the record, in there, there is a statement by the defendant Munio Knell about the payment of \$1,000.

By Mr. Eben: It strikes me, your Honor, it is improper to discuss this matter in the presence of the jury.

By Mr. Gerber: I object to this statement, your Honor, in the presence of the jury.

By The Court: Step in the jury room, ladies and gentlemen.

(The following proceedings were had out of the presence and hearing of the jury:)

By The Court: Now, what is it? Tell me.

By Mr. Downing: If your Honor please, there are two \$1,000 disbursements in the ledger.

By The Court: Yes.

By Mr. Downing: October 30th, which is two days before the defendant Grace Klemtner went to Paris, and

November 17th, there is a disbursement of a thousand dollars. There is an indication in the transcript of the testimony taken at the Immigration Department of Munio Knoll, in which he indicated in November of 1947 he, Marcel Max Lutwak and Bess Osborne, met in a restaurant in Chicago, at the Admiral Restaurant, and Marcel gave to Bess a check for \$1,000.

By The Court: In the statement of whom?

By Mr. Downing: Munio Knoll. There is a statement that he, Marcel Lutwak and Bess Osborne, some time in November, 1947, met at the Admiral Restaurant in Chicago, and that Marcel handed Bess a check in the amount of \$1,000. In the statement of Marcel Lutwak, there is likewise testimony that he, Munio Knoll and Bess Osborne, met at the Admiral Restaurant in Chicago, and that he prepared a check on his account at the First National Bank in Chicago in the amount of a thousand dollars, and handed it to Bess Osborne at that particular time.

By Mr. Bartoline: He said he gave it to Mrs. Knoll.

By Mr. Downing: No, he said he gave it to Bess Osborne.

By The Court: Who said he gave it to Bess Osborne?

By Mr. Downing: Marcel Lutwak said and Munio Knoll both said it in separate statements.

543 By Mr. Sokol: Of course, as the record presently stands, we don't know which questions and answers Mr. Downing wants to put in from these statements. He has already indicated he is going to segregate some of them.

By The Court: He said he might leave out some questions, but the statements are in evidence.

By The Court: Take a few minutes recess, gentlemen. (Recess taken).

By The Court: Bring in the jury.

(The following proceedings were had in the presence and hearing of the jury.)

By Mr. Eben: I thought there was to be no further argument in connection with this matter.

By The Court: No, I do not need any further argument.

The objections to Government's Exhibit 20 for identification and Government's Exhibit 21 for identification will be overruled and they may be received.

(Said documents, so offered and received in evidence, were marked Government's Exhibits 20 and 21.)

544 By Mr. Downing: May we have leave to substitute photostats?

By The Court: Yes. I understand there is no objection to the Government substituting a photostat.

By Mr. Sokol: No objection.

By Mr. Downing: If your Honor please, Mr. Bartoline, on behalf of Marcel Lutwak, and myself, have agreed to a stipulation that the signature on Government's Exhibit 20, the authorized signature, is the signature of Marcel M. Lutwak. Is that right?

By Mr. Bartoline: Yes.

By the Court: If that stipulation is to be admissible against the other defendants, they will have to join in it.

By Mr. Eben: Show it to Marcel. If he says it is his signature, I will certainly say it is. Without prejudice to my objection to the exhibit, I will say that it is Marcel's signature.

By Mr. Gerber: That is my position, too, as to Munio Knoll.

By Mr. Sokol: The same as to Regina Treitler.

By Mr. Downing: Is there any cross examination of this witness?

545 By Mr. Sokol: No cross.

By Mr. Downing: Thank you.

(Witness excused).

MORRIS HABERMAN, called as a witness herein on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Downing.

Q. Will you state your name, please?

A. Morris Haberman.

Q. How do you spell your last name?

A. H-a-b-e-r-m-a-n.

By The Court: M-o-r-r-i-s?

By The Witness: That is correct.

By Mr. Downing:

Q. What is your address, Mr. Haberman?

A. My address is Morristown, New Jersey.

Q. What is your business or occupation, sir?

A. I am a furrier, in business for myself.

Q. And do you have your business in the same town that you previously mentioned?

A. The same town, Morristown.

By The Court: What is the town?

By the Witness: Morristown, New Jersey.

By Mr. Downing:

Q. How long have you been in the fur business, approximately how long?

547 A. For myself?

Q. Yes, entirely?

A. Entirely?

Q. Yes.

A. I am in the fur trade since 1923.

Q. How long have you been for yourself?

A. Fifteen years.

Q. Are you acquainted with the defendants Munio Knoll, Marcel Max Lutwak and Regina Treitler?

A. I am.

Q. Do you see them in the court room?

A. Yes.

Q. Will you point them out, please?

A. They are sitting at that table next to each other.

By Mr. Downing: Let the record show that the witness identifies the defendants Munio Knoll, Marcel Max Lutwak and Regina Treitler.

By Mr. Downing:

Q. Calling your attention to the defendants Munio Knoll and Marcel Lutwak, when did you first meet them?

A. It was at the end of November, 1947.

Q. Where?

A. In the hotel—it is on 46th Street. For the
548 moment the name escapes me.

Q. Is it in New York?

A. New York City. It is between 6th and 7th Avenue, on 46th Street in New York City.

Q. To refresh your recollection—

A. Century, I believe.

Q. Century Hotel?

A. Yes.

Q. Who introduced you to the defendants?

A. Mr. and Mrs. David Weissman.

Q. Who else was present at that time?

A. My wife.

Q. Did you have a conversation at that time and place regarding the defendants Munio Knoll and Marcel Lutwak?

A. Yes.

Q. Will you relate in substance what the conversation was—

By Mr. Sokol: Objection.

By Mr. Downing:

Q. —stating who said what?

By Mr. Eben: Same objection, of course, to Leopold Knoll, my objection being—

By The Court: Who were there?

549 By the Witness: Mr. Munio Knoll, Mr. Marcel Lutwak and Mr. David Weissmann, Mrs. Blanche Weissmann, my wife Eleanor, and myself.

By the Court: Mr. Munio Knoll and Mr. Marcel Lutwak, is that right?

By Mr. Downing: Yes.

By The Court: When was this?

By Mr. Downing: November, 1947, he said.

By The Court: What the witness proposes to say would be admissible, if it is relevant and material, as against Munio Knoll and Marcel Lutwak, and it will be received as against them, if it is relevant and material, only until I hear what it is.

By Mr. Downing: Yes, your Honor. All right.

By Mr. Downing:

Q. Will you relate the conversation as best you recall, sir?

A. Yes. We first spoke, and I mentioned to Mr. Knoll that I was quite surprised to hear from my friend Weissman that he had left Roumania comparatively recently, only a matter of two or three months ago, and was here in the United States so quickly, and Mr. Knoll said, "Yes," he says, "it went very fast."

By Mr. Eben: I want to make sure it is clear that this is Munio Knoll he is talking about.

By Mr. Downing: I think the record is clear on that.

By The Court: The record shows.

By Mr. Downing:

Q. Will you go ahead?

A. Yes. "Yes, it went very fast."

And I said to him, "I am very much interested to know how it goes."

He says, "Well, when you have the right connections and are willing to spend money you can pave your way very quickly.

We decided then, and he said, "Well, let us not talk about things like that. I am very hungry. You have come late. I expected you two hours earlier. Let's go out some place and have a good time."

We all, all six of us, went to some night club where we had dinner.

551 By Mr. Eben: I object to this portion as immaterial, in any event.

By The Court: Overruled.

By Mr. Downing:

Q. Did you have any further conversations?

A. Yes. And during the course of the evening I asked Mr. Knoll why he hadn't brought his wife Mania to New York, and that I had heard she was a very nice woman and a very good looking woman.

Mr. Knoll said that his wife would not leave the course that she was taking in English, and she wouldn't leave Chicago for any reason.

And then he took out from his wallet a picture and showed it to me, and we all passed it around the table, and that was the woman that I later met and knew as Mania Knoll.

At the table the discussion—my wife was discussing, having a few words with Mr. Lutwak—I don't mean to imply that they were any argument—just talking to him across the table, and she asked him whether he was married. Mr. Lutwak said, no, that he was single, and if she knew of a nice girl he would be very glad and interested to meet one.

That is about all that happened that evening.

552 Q. Did you say the photograph was shown, passed around to all of the people?

A. To all of them, yes.

There is one other thing that I recall. Mr. Munio turned to Marcel and—no, said to me, that that picture does not really do her justice, she is much better looking than that picture shows, and he turned to Marcel, "Am I not right?" And Marcel said, "Yes, she looks a lot better on the picture."

Q. Do you recall any other conversation at that time about that matter?

A. The only other conversation that we had was that we might—I mean that we made an appointment for Tuesday to meet again.

Q. Did you later see the person whose picture you saw at that particular time?

A. Yes.

Q. And by whom were you introduced to that person?

A. By Mr. and Mrs. David Weissman.

Q. Under what name were you introduced to her?

A. Mania Knoll.

Q. Who was present at that time?

A. Mr. and Mrs. Weissman and my wife.

Q. Where did you meet Mania Knoll?

553 A. In New York.

Q. Approximately when was that?

A. That was, as close as I can place it, it was about the third week in March.

Q. And this was in 1948?

A. 1948.

Q. Now, did you meet with them, Munio Knoll and Marcel Lutwak, again after this first discussion that you have just related?

A. Yes, we met on the following Tuesday. We first met on a Sunday, and that was the Tuesday after the Sunday.

Q. What part of the year was that?

A. I would place that at the very end of November or the very beginning of December.

Q. And this is in—

A. In 1947.

Q. Where did you meet the second time now?

A. We again met at the Century Hotel, and the room—

Q. Who was present at that time?

A. Well, Mr. and Mrs. Weissman, and my wife and I and Mr. Munio Knoll and Mr. Marcel Lutwak.

Q. All right. Did you have any conversation at that time about Leopold Knoll?

554 A. Not in the hotel.

Q. After you met these people at the hotel, did the group go some place?

A. Yes. We were joined by a Mr. David Frost, who was introduced to us by Mr. Munio Knoll as being a business man, an exporter and importer, and we all left together and we visited two, I believe two night clubs. One of them

I believe was the Latin Quarter.

555 Q. Did you have any conversation with the defendants Munio Knoll and Marcel Lutwak about defendant Leopold Knoll?

A. Yes.

By Mr. Eben: Objected to. Obviously, this might conceivably go along some sort of admission. It is, therefore, if I am correct in my prognostication, not admissible against Leopold Knoll, not having been made in furtherance or pursuance of the conspiracy. It is not an act or declaration, as I said, in furtherance of it; it will probably be a narrative of past events.

By the Court: What is your theory?

By Mr. Downing: Our theory, your Honor, from the evidence already of this witness, the conversations between Mareel and Munio and the previous testimony in this case, that these conversations are admissible as acts and declarations of one, equally admissible against all of these people.

By Mr. Eben: It must be in furtherance or pursuance of the conspiracy, assuming there was one.

556 By Mr. Downing: Yes. This was before—mentioning what it might be—but this is not a past event. This is about a coming event.

By The Court: Step into the jury room, ladies and gentlemen.

I am sorry to make you walk so much, but I would rather have you walk than walk myself.

(Whereupon the following proceedings were had out of the presence and hearing of the jury.)

By The Court: Do you remember the question, sir?

By The Witness: Yes.

By the Court: Will you answer it.

By the Witness: Mr. Munio Knoll told me the reason he was in New York was because he was expecting his brother from Europe, and Mr. Marcel Lutwak said he probably will arrive the following day and will be able to stay in Chicago. Then Mr. Munio Knoll said to me, "Well, you see how easy it is if you know how to come to the United States."

By Mr. Eben: Is that the full extent of it?

By The Witness: That is the full extent.

By The Court: Anything further from this witness?

557 By Mr. Downing: I have quite a bit. There is quite a bit more testimony.

By The Court: Is there anything else there will be question about?

By Mr. Downing: Just let me review my notes a minute.

By Mr. Sokol: I would want to object to this question, as well as the previous one, to which I have already objected.

By Mr. Downing: There is going to be quite a bit of testimony concerning acts and events that have taken place and conversations, principally with Munio Knoll, that is, after this particular conversation, principally with Munio Knoll, and one with the defendant Regina Treitler, which will carry us into 1948 quite a ways. But, as I say, it is after this conversation, principally, the conversations are with respect to conversations with Munio Knoll, at which, in most instances, no other defendant was present, that is, after this particular conversation.

By The Court: With respect to the others, do you contend they are admissible as against anybody other than Munio?

By Mr. Downing: I contend they are admissible against all of them.

By The Court: Because they are made during the continuance of the conspiracy?

By Mr. Downing: That is right.

By The Court: And in furtherance of it?

By Mr. Downing: And in furtherance of the conspiracy, your Honor.

By The Court: I suppose there will be an objection to every question.

By Mr. Sokol: We could not possibly know in advance.

By The Court: Do you want to go through with this witness and find out what the rulings are going to be? I cannot tell. You ask what was said and I haven't any idea what was said.

By Mr. Downing: I can state this, I can take the Court's time, it might take probably a half an hour or forty-five minutes before we complete it.

By the Court: It might be better than the jury running back and forth.

This conversation which the witness has just de-
559 tailed in the absence of the jury, I think is admissible,
telling how, as is apparent from it, Mr. Lutwak and

Mr.—

By Mr. Downing: Munio Knoll?

By the Court: Munio Knoll were there in New York
to meet—

By Mr. Eben: Leopold.

By the Court: —Leopold.

By Mr. Downing: And we have the testimony of Jane
Turner that they were there and did meet Leopold.

By Mr. Eben: I think the part of it—

By the Court: So, I think it is admissible.

By Mr. Eben: The part of it about being in New York
might be admissible, but any statement as to how easy it
is to come in is a statement against interest.

By the Court: Of course it is.

By Mr. Eben: And is not admissible against co-con-
spirators because a statement against interest is not a
declaration or act in furtherance of the conspiracy.

By the Court: It may be. It may be. Any admission
may be in pursuance of the conspiracy. It is not just
560 excluded because it happens to be an admission.

By Mr. Sokol: As long as Mr. Downing has al-
luded to a good deal more testimony and other conversa-
tions, possibly as the Court indicated, the only way we
could save the question as far as the jury is concerned,
might be, with respect to each conversation, to take this
man over his testimony outside the presence of the jury
and give us an opportunity to make our objection in a
timely manner.

By Mr. Downing: If your Honor please, I will abide
by the Court's ruling, but I don't think it is necessary.
I think the rest of this testimony falls into the same
category that this testimony does.

By the Court: There comes a time when whether some-
thing is in furtherance of a conspiracy, is a question of
fact. The jury passes on it and not me. If it can be rea-
sonably regarded as made in pursuance of the conspiracy
and in furtherance of it, it is a question of fact. If under
no circumstances can it be reasonably contended that it is
made in furtherance of the conspiracy then I exclude it.

But now, after we have a world of testimony in
561 here about a conspiracy, there isn't any doubt about
it now.

By Mr. Eben: May I say this to your Honor, if your Honor has concluded, that it is not a question of fact. It is a question of law for the Court to decide.

By the Court: Why?

By Mr. Downing: No.

By Mr. Eben: As to whether an act or declaration is in pursuance or furtherance of a conspiracy. If your Honor does not decide it, then you have completely abolished the rule with respect to it, because in all events it would go to the jury as a question of fact. Then there will be no rule.

By the Court: No. A man is taken into a police station and makes a confession. Obviously—I suppose you might conjure up some sort of a conspiracy, where it might be made in furtherance of a conspiracy, but in the ordinary conspiracy that is not made in furtherance of it. He might do some equivocal act.

I have to instruct the jury, if it is not in furtherance of a conspiracy, that they do not have to regard it, even if it is in.

562 By Mr. Eben: That is where I differ. I say it is your job, and you say under these circumstances it is the jury's job.

By the Court: I venture to say that you will tender me an instruction, if you do your duty to your client, that the jury shall not consider any act that is not in furtherance of the conspiracy.

By Mr. Sokol: Under the present state of the record there is no immediate connection of each defendant with each and every other defendant.

By Mr. Downing: Oh—

By Mr. Sokol: Just a moment. Some of the testimony which has been alluded to by Mr. Downing may very well be properly objectionable, and we would have to once again immediately arise and object. All I am suggesting to the Court now is this, that you don't know and we don't know to what questions we will object.

By Mr. Eben: Thus far in the case, my observation is that practically everything the Government has shown thus far, by way of proving any type of conspiracy, has been admissions against interest or statements made from the witness stand by people who had conversations.

563 By the Court: By admissions against interest, you mean admissions—

By Mr. Gerber: Any kind of admission.

By the Court: Admission may be—

By Mr. Gerber: What I mean—

By the Court: An admission may be admissible against all parties to the conspiracy.

By Mr. Gerber: Thus far the Government witnesses testified to conversations with various people, with some present and some absent. That is the extent of it.

By the Witness: Your Honor—

By Mr. Gerber: Disconnected statements of people made to the witnesses outside the presence of certain defendants.

By the Court: I will just give you an illustration of a type of case you are not wholly unfamiliar with—prosecuting, I mean.

A man comes running into a plumbing shop and says, "Come over here to the barn, quick. We have a still over there, and it is about to blow up. Come over and help us a bit."

What do you think of that? Would that be admissible?

Suppose the charge is conspiracy in the operation of 564 the still.

By Mr. Gerber: What I am talking about is that everything is admissible so far by your ruling, subject to it being connected up and subject to the Government proving the conspiracy.

By the Court: I have gone as far as any Judge ever went to keep out any improper testimony against your clients, and if you don't know it, I think you do know it, but I don't want to go to absurd lengths.

By Mr. Watt: Your Honor—

By the Court: Bring in the jury.

(Whereupon the following proceedings were had in the presence and hearing of the jury:)

By Mr. Eben: Without deserting my position at all, and adhering fully to everything I said before during the course of the colloquy, your Honor indicated you would make some statement to the jury as to whether or not they would determine whether the declarations were made in pursuance of conspiracy. However, I am not requesting you to do it, because my view is contrary.

By the Court: I am not going to advocate the question

of whether it is admissible. I will decide whether it
565 is admissible. But finally, I will instruct the jury, if
I am requested.

Objection overruled. Proceed.

By Mr. Downing:

Q. We were talking about this meeting there, and the
last question concerned a conversation with the defendant
Munio Knoll and Marcel Lutwak and concerning Leopold
Knoll.

A. Yes.

566 Q. Will you relate the conversation?

A. Mr. Munio Knoll told me that the purpose for
his stay in New York was because he was expecting the
arrival of his brother Leopold, and Mr. Marcel Lutwak
remarked that they had been expecting him for two days
now, and he hadn't arrived, and if he did not arrive by to-
morrow, which would be Wednesday, he would have to go
back for business reasons to Chicago.

Q. Was there anything else said at that particular time
about that matter?

A. No. The only thing that was said is that when Mr.
Munio Knoll mentioned about his brother coming, he says,
"You see how easy it is to come to the United States if you
know how."

Q. Now directing your attention to Government's Ex-
hibit 22 marked for identification. I ask you to look at that
and ask if you have seen that before.

A. Yes, sir, I did.

Q. And I ask you where that photograph was taken.

A. I believe it was in the Latin Quarter in New York
City.

Q. Was that taken the night and at the place you men-
tioned you had this conversation where you went
567 after you met at the Century?

A. That was taken on the Tuesday of that week.

Q. In December, 1947?

A. Very early in December.

Q. Who all was present at that time the picture was
taken?

A. On my right here is Mrs. Weissman; Mr. Munio
Knoll—

By Mr. Owen: I object to what the photograph shows
until it is introduced in evidence.

By Mr. Downing: If your Honor please, I think he has a right to show, to identify the parties there.

By the Court: Yes. Maybe it is the hockey team. I don't know.

By Mr. Downing:

Q. Start all over again.

A. Mrs. Weissman, Munio Knoll, my wife, Mr. Weissman, Mr. Frost, David Frost, myself and Mr. Marcel Lutwak.

Q. Is that a true and correct photograph or picture that was taken at that particular time and place?

A. It is.

By the Court: Let me see it.

By Mr. Downing: Yes, your Honor.

568 By Mr. Downing:

Q. I ask you if you received this photograph Government's Exhibit 22 marked for identification on that evening and at that place.

A. That evening, yes, and that place.

Q. Directing your attention to February of 1948, did you have occasion to see the defendant Munio Knoll?

A. Yes, I did.

Q. Where?

A. Again in the Century Hotel.

Q. In New York City?

A. New York City.

Q. Who was present at that time, sir?

A. My wife, Mr. and Mrs. Weissman—

Q. And Munio Knoll, is that right?

A. And Munio Knoll, that is right.

Q. What happened at that time while you were there at the Century Hotel with the people you mentioned?

By Mr. Sokol: I object.

By Mr. Eben: Yes, I object too, based on the same grounds as I had to the last objection.

By the Court: Do you contend this is admissible
569 against everyone?

By Mr. Downing: That is right, your Honor.

By the Court: I don't know whether it is or not, until I hear it I cannot tell. I am not a mind reader.

By Mr. Downing: I submit it is material, your Honor, and I think we will connect it.

By the Court: Proceed.

By Mr. Downing:

Q. Will you relate what took place at that time and place?

A. Yes. We asked Mr. Knoll to come down to us to eat, and Mr. Knoll, Munio Knoll, said that he was expecting a very important telephone call from Chicago and that he would not leave the room until that call came through, unless it was towards the evening. And—I am trying to separate each day, you know.

Q. What else took place that day?

A. I asked him about his brother Leopold and he told me that his brother was or had been ill and in Florida and was recuperating there, and that it cost him a lot of money, that his brother had cost him a lot of money because he was paying for all this and also paid for all expenses for his coming over.

570 Q. Was there any other event that took place at that time, if you recall, or conversation?

A. Well, one event I recall—I mean I recall there being three days in succession—I mean three afternoons and evenings.

Q. Were you there when he received a telephone call from Chicago?

A. Yes, that was the last day, that was on a Sunday.

Q. Approximately what time of the day was that?

A. That was about six o'clock in the evening.

Q. This was in February, 1948?

A. This was the very end of February.

Q. Who was present this particular time?

A. Mr. and Mrs. Weissman, myself, my wife, and Mr. Knoll.

Q. All right.

A. The call came through and Mr. Knoll generally never answered the telephone, practically never answered the telephone, because he did not know how to speak English, and it was a call from Chicago.

By Mr. Gerber: I object. How could he know?

By Mr. Downing:

Q. Who answered the phone?

A. I was sitting right there at the desk.

571 Q. Who answered it?

A. I don't know whether it was me or Mr. Weissman. It was one of us two.

Q. All right.

A. And Mr. Knoll was called and told that there was a person-to-person call from Chicago.

By Mr. Gerber: I object to this because I don't think it is within the knowledge of this witness. He was not on the phone.

By the Court: He said Mr. Knoll was told that it was a person-to-person call.

By Mr. Gerber: If he did not hear it—

By the Court: Well, he or Mr. Weissman answered the phone, and Mr. Knoll was told that it was a person-to-person call.

Objection overruled.

By Mr. Gerber: I object unless he answered the phone he is not in a position to answer the question.

By the Court: Well, he was in the room, he tells us. Overruled.

By Mr. Downing:

Q. Will you relate what took place after Mr. Knoll was told that?

572 A. Mr. Knoll got up immediately after having a discussion in a foreign language, which I am pretty sure was Hungarian—

By Mr. Owen: I object to that, if the Court please.

By the Court: Overruled.

By Mr. Downing:

Q. All right. And then what took place?

A. And then he stated to us that that was the call from Chicago he had been waiting these three days for, and asked me to try and contact and check what the very next plane to Chicago would be.

Q. Did you contact to find out when the next plane to Chicago would be?

A. No. Mr. Weissman looked up the number in the book for me and then he grabbed the telephone and took the telephone and called up.

Q. Who is "he" now?

A. Mr. Weissman called up the airlines.

Q. And were arrangements made in your presence and in the presence of Munio Knoll for him to catch the next plane?

A. Yes.

By Mr. Eben: I object to leading. Let him say
573 what was said. This witness seems to be intelligent.

By the Court: Oh well, overruled.

By Mr. Downing:

Q. What took place?

A. Mr. Weissman told Mr. Knoll that there was a plane, I don't know whether it was seven or eight o'clock that evening, New York time, and we took Mr. Knoll to the bus line, airport bus line.

Q. Approximately what time did you leave Mr. Knoll?

A. That was within 20, 25 minutes after the phone call.

Q. Directing your attention to April of 1948—

By Mr. Eben: I object to that question as completely immaterial.

By Mr. Gerber: I object.

By Mr. Eben: Nothing to do with any of the issues in this case, and I do not regard it as binding on my client, for the reasons advanced before, and also because it was after the termination of the alleged conspiracy, and not an act in pursuance of the conspiracy as alleged, and my client has not been established close enough to the conspiracy 574 to have it admissible against him in any event.

By Mr. Downing: It is very admissible. It ties in with the testimony—

By Mr. Gerber: I object to any statement the jury should not hear at this time

By Mr. Eben: There are only a few minutes left.

By the Court: We have to use them all.

(Whereupon the following proceedings were had out of the hearing of the jury:)

By Mr. Downing: I submit there is testimony of the witness Joseph Ludmer concerning a conversation he had with the defendant Munio Knoll on a Monday in February of 1948 in which he indicated Munio Knoll stated to him he had come home late from New York and had difficulty getting into his apartment, and when he got in he saw Marcel jump from the window. There was testimony of Ludmer that on that Monday he had first seen Marcel lying at home with a plaster cast on his arm. There is testimony he 575 had seen Marcel on Sunday and Marcel did not have any plaster cast.

By the Court: Yes.

By Mr. Downing: I think it is tied right in.

By Mr. Gerber: I think it is remote to tie an incident like this into the other one. I think both incidents are immaterial.

Your Honor previously stated you would admit it if it is material to the issues.

By the Court: Don't talk so much to me. Let me think.

By Mr. Gerber: I am sorry.

By the Court: All right.

(Whereupon the following proceedings were had in the presence and hearing of the jury:)

By the Court: The testimony of this witness with respect to the telephone call from Chicago to New York and his testimony with respect to the defendant Munio Knoll departing and going to the air port, is admissible only against the defendant Munio Knoll and will be received 576 and will be considered by you only as against the defendant Munio Knoll.

By Mr. Downing:

Q. Now directing your attention, Mr. Haberman, to April of 1948, did you have occasion in that month to see the defendant Munio Knoll?

A. I did.

Q. Where did you see him then?

A. Again at the Century Hotel.

Q. Who was present at that time?

A. My wife, Mr. Knoll and Mrs. Mania Knoll.

Q. Pardon?

A. And Mrs. Mania Knoll.

Q. Is this the same person that you had previously seen a photograph of at the first conversation that you have previously referred to in your testimony?

A. That is right.

Q. Did you have any conversation with Munio Knoll regarding his family status at that time and place?

A. Not at that particular time.

Q. Thereafter did the group of you go any place at that particular time?

A. We went out.

Q. And thereafter did you have occasion to again 577 see Munio Knoll?

A. Yes?

Q. And approximately when was that?

A. That was on that very same visit.

Q. Who was present at that time?

A. Just myself and Mr. Knoll.

Q. And did you have a conversation with Munio Knoll regarding his family status at this particular time?

A. I did.

Q. Will you relate what Munio Knoll said and what you said at that time and place?

By Mr. Eben: I object on behalf of Leopold Knoll.

By the Court: I will hear it and then I will rule.

By Mr. Eben: Excuse me?

By the Court: I will hear it and then I will rule.

By Mr. Eben: I am not objecting on the grounds I advanced before, that the act was in furtherance or not in furtherance of the conspiracy.

I object now merely to keep my record, because in my opinion there is no sufficient connection shown so 578 as to bind him by any conversation. That is the objection at this stage, on behalf of Leopold Knoll.

By Mr. Sokol: That is an objection I myself adopt. I wanted to make the statement over there.

By the Court: I don't understand you.

By Mr. Eben: My objection is based on the fact that Leopold Knoll has not been sufficiently connected with any—

By the Court: That is in the record. I have ruled against you on that. I have ruled there is sufficient to tie in.

By Mr. Eben: I am trying to make clear that I am perfecting my record on it, that is all.

By Mr. Downing:

Q. Will you relate the conversation, Mr. Haberman, please?

A. I told Mr. Knoll that by his actions it was quite plain that he still cared for his wife Mania Knoll and that my advice to him would be to go back, that the two of them should go back together again.

Mr. Knoll told me at that time that it was not as 579 simple as all that, that, that he—Mrs. Mania Knoll—when he one day, you know, when he came back from New York suddenly he found her with another man in his room, and that it was not as simple as that to go back with her.

By Mr. Eben: I object to that on the ground it is not in furtherance or in pursuance of any conspiracy, at this stage.

By the Court: My dear sir, I told you I would rule after I had heard it.

By Mr. Eben: But the vice of it is that the jury also hears it, and they ought not to be permitted to hear any irrelevant testimony.

By the Court: It is not irrelevant. It is admissible as against Munio Knoll, as I have ruled.

By Mr. Eben: If that is the court's ruling, all right, then I am content with that.

By the Court: I wish some of your associates would explain it to you—I have tried to make that clear—it is admissible only against Munio Knoll. Explain it to the gentleman.

580 By Mr. Eben: There have been a series of conversations, and while you have made it clear on other conversations, we have to make it clear on each conversation.

By the Court: Will you be seated, sir. I have made it clear on all of them. Will you be seated?

Proceed.

By Mr. Downing:

Q. Was there anything further at that particular conversation about that matter?

A. No, not at that time.

Q. Directing your attention to May, 1948, did you have occasion to see Munio Knoll?

A. I did.

Q. Where did you see him?

A. Again in the Century Hotel.

Q. Who was in the room at that particular time when you came there?

A. Mrs. Mania—Mr. Munio Knoll was in there alone.

Q. And who was with you at that time?

A. My wife.

Q. And after you were there did anyone else come into the room?

581 A. Yes. Mrs. Mania Knoll came out from the bath room.

Q. What time of day was this?

A. Late afternoon this was.

Q. Thereafter did the group of you, four of you, go any place?

A. Yes, we did.

Q. Will you tell the court what took place then and where you went?

A. Yes. We went out to a night club again, and—

Q. Was that in New York?

A. That was in New York.

We were joined, before going to the night club, by Mr. and Mrs. Weissman, and we spent a nice evening together.

Q. There were six of you at the night club, is that right, sir?

A. Yes. We took a picture that evening.

582 Q. What club was it, do you recall?

A. I don't offhand recall.

Q. Speak out loud.

A. I don't recall at the moment.

Q. Directing your attention to Government's Exhibit 3, marked for identification, I ask you to look at that and ask you if you have seen that before?

A. Yes, I did.

Q. When was that photograph taken?

A. That photograph was taken the evening of May 18th.

Q. Was that in 1948?

A. 1948.

Q. In relation to the date that you have previously mentioned, was that taken on the same day?

A. On the same day, same evening.

Q. Of course, you were present when that picture was taken, is that right, sir?

A. That is right.

Q. Will you tell the Court and jury—identify the persons who were present, commencing with the right hand corner of the picture.

A. Myself, Mrs. Blanche Weisman, Mr. David Weisman, my wife, Mr. Munio Knoll and Mrs. Mania Knoll.

583 Q. With respect to the photograph, is that a true and correct photograph of the people who were with that group at that particular time and place?

A. That is true.

Q. With respect to the writing on the inside cover to the left, I ask you who placed that writing thereon, if you recall?

A. The writing was placed on by Mrs. Mania Knoll.

Q. And was that applicable to all the writing or—

A. No. It was signed by her, by Mr. Z. Romankiewicz, and by David, Blanche—

Q. And did you see those people place that writing on that document at that time?

A. Yes.

Q. And was that in front of all the people who were present at that time and place?

A. That is right.

Q. And did you receive that photograph at that particular place and at that time?

A. Yes, I did.

Q. After the date of this photograph, when did you next see the defendant Munio Knoll?

A. I believe it was the following morning.

-Q. Where did you see him?

A. At the Century Hotel.

584 Q. Who was there at that time?

A. Mr. Knoll and Mrs. Knoll—or Romankiewicz.

Q. Did you have any conversation with him at that time about this matter you have previously testified about?

A. Yes, I did, and I had a conversation with Mr. Knoll.

Q. Anyone else?

A. Private. Nobody else present.

Q. Will you tell the Court and jury what that conversation was, what did Mr. Knoll say and what did you say, as best you recall?

By Mr. Eben: Objection again, if your Honor please.

By the Court: I will hear it and then I will rule as to whom it is admissible.

By Mr. Downing:

Q. Will you go ahead, please, Mr. Haberman?

A. Yes. I again told Mr. Knoll, I asked why he didn't get together again with Mania, as he was showing that he still loved her. He told me that it wasn't so simple. And then he told me that one day when he returned to New

York he found her with another man and the other
585 man—I believe he said 11:00 o'clock in the evening—the other man was Marcel Lutwak, and although he wants to forgive that to his wife, the fact was that Mr. Lutwak, that she let Mr. Lutwak jump out of the window to hide from him, and that Mr. Lutwak was seriously hurt by that, and the whole family was up in arms against Mania for letting him jump out of the window and endangering his life.

Q. Was there anything more to the conversation about that matter at that time and place?

A. Yes, there was. He told me that he would seriously think it over, and he thinks he might get together with her in spite of all the objections.

By Mr. Downing: If your Honor please, I can continue, but—

By the Court: I think that conversation is admissible against the defendant—

By Mr. Gerber: Munio Knoll?

By the Court: —Munio Knoll only, and it will be so received.

By Mr. Gerber: I would like at this time, before we recess—may I note an objection to all the testimony of this witness at this time, and ask that it be stricken and the Court instruct the jury to disregard it, on the ground 586 it is irrelevant, and the testimony as to conversations transpiring after the end of the alleged conspiracy is not admissible against Munio Knoll.

By the Court: And is what?

By Mr. Gerber: It is, therefore, not admissible against Munio Knoll under any consideration.

By the Court: Motion denied.

Two o'clock, ladies and gentlemen.

(Thereupon the further trial in the above entitled case was recessed until 2: o'clock p. m. of the same day, Thursday, January 11, 1951.)

587

* * (Caption,—No. 50 CR 464) * *

Chicago, Illinois,
Thursday, January 11, 1951,
2:00 o'clock p. m.

Met pursuant to recess.

Present:

Mr. Downing
Mr. Owen
Mr. Gerber
Mr. Sokol
Mr. Bartoline
Mr. Sokol
Mr. Eben
Mr. Watt
Mr. Weissbourd

And Thereupon the following further proceedings were had herein:

(The following proceedings were had out of the hearing and presence of the jury:)

By Mr. Eben: There are several matters in the record, your Honor, that need correction. I think we ought to do it now, before the jury comes in. There are only 588 two I direct the Court's attention to now. I have already discussed them with Mr. Downing. On page 415 of the record, there appears the word "questions". The proper word to go in at that particular place is "signatures". Is that correct?

By Mr. Downing: That is correct.

By Mr. Eben: At page 383, there appears what appears to be some questions asked by Mr. Gerber, actually starting with the words: "When you received your declaration of intention", which appears on page 383, that is the answer as given by Miss Algano yesterday, reading from her stenotype notes of Government's Exhibit 13, and I think the record should so show.

By the Court: Do you agree?

By Mr. Downing: I agree, your Honor.

By the Court: Very well.

By Mr. Eben: Incidentally, in case I have not made it clear, Miss Algano's answer extends up to page 385 to where another question is indicated by Mr. Gerber.

By Mr. Downing: Yes. I think the record so shows, because it shows in quotes.

By the Court: Do you agree to that?

By Mr. Downing: I agree, your Honor.

By the Court: Very well.

589 (The following proceedings were had in the presence and hearing of the jury:)

MORRIS HABERMAN, a witness on behalf of the Government, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Cont'd) By Mr. Downing.

Q. What is your name, please?

A. Morris Haberman.

Q. Now, keep your voice up so that that the jurors and defendants' counsel and the defendants can hear you, please.

A. All right.

Q. You are the same Mr. Haberman who was sworn and testified this morning, is that right?

A. That is right.

Q. Now, this morning at recess, you had told about conversations in New York City, in May of 1948. After that date, when did you next see the defendant Munic Knoll?

A. On June 4, 1948.

Q. Where was he at that time, sir?

A. In the lobby of the Stevens Hotel in Chicago.

590 Q. Who was with him at that time?

A. Nobody.

Q. Where did you go from the Stevens Hotel?

A. We stayed in the lobby.

Q. Did you have a conversation with him at that time?

A. Yes, sir, we did.

Q. Will you relate to the Court and jury what took place as far as conversations at that time and place?

By Mr. Eben: Objection on the same ground as heretofore.

By the Court: I will rule on it after I have heard it.
By the Witness:

A. The first thing that was mentioned was that I had spoken to his wife, Mania, on the telephone, the same day, and she had invited me up to the apartment, and I refused to go there, and Mr. Romankiewicz, accused me of being rude to his wife.

By Mr. Downing:

Q. All right.

A. And we started discussing that. We started off on poor terms, and we had an argument, and I left him there.

591 By Mr. Eben: I think the last part, relative to the argument, ought to go out.

By the Court: Oh, it may stand.

By Mr. Eben: It calls for a conclusion, your Honor.

By the Court: I know, but let it stand.

By Mr. Downing:

Q. Thereafter, after that time in June, 1948, when did you next see him?

A. I saw him the next day.

Q. Where did you see him on the next day?

A. In an office in downtown Chicago.

Q. Who was with you at that time?

A. Mr. David Weisman.

Q. Anybody else?

A. Yes, there was a relative, I believe a son-in-law of Mrs. Treitler.

Q. Was this in June of 1948?

A. That is right, June 5th.

Q. Was this in June of 1948?

A. That is right, June 5th.

Q. Now, at that time and place, did you have a conversation regarding the matters about which you testified this morning?

A. Yes, sir, I did. I told Mr.—

592 By Mr. Sokol: Objection. There were no defendants present, as I understand it, at this meeting.

By Mr. Downing: Your Honor, I think he said Munio Knoll was present.

By the Court: Munio Knoll was present, as I understand it. Is that correct?

By the Witness: No, Munio Knoll was not present at the first meeting.

By the Court: Who was there?

By the Witness: Oh, yes, Munio Knoll was present.

That is the second meeting I was talking about. Yes, Munio Knoll was present at the second meeting.

By the Court: He may answer.

By Mr. Gerber: Our objection I would like to have stand with reference to that.

By Mr. Eben: I object on behalf of Leopold Knoll. And may I call the attention of the Court, you did not rule with reference to the last conversation?

By the Court: I thought I did.

By Mr. Eben: My recollection is slightly different. 593 Out of an abundance of caution, I call your Honor's attention to it. It was a very short conversation about which there was an argument. I do not think you ruled on that.

By the Court: This conversation, if I have not already ruled, ladies and gentlemen, the conversation which the witness has testified to with Mr. Munio—is that the name?

Mr. Mr. Downing: Munio.

By the Court: Munio Knoll, at which time the witness said there was an argument, is admissible only against Munio Knoll, and it will be received by you only against Munio Knoll.

By Mr. Downing: •

Q. Now, with respect to this conversation about which you were about to testify, what was said by Munio Knoll, or anyone else, in his presence at that time and place?

A. During the conversation, I told Mr. Munio Knoll. I knew that he had come to this country illegally.

By Mr. Bartoline: I cannot hear him, your Honor.

By the Witness: That I know that he had come to this country illegally. That I also knew his wife, Mania, 594 had come illegally, and that his brother had come here in the same manner. The other gentlemen present said no, his brother had a perfect right to get married.

By Mr. Downing:

Q. Do you remember who that was?

A. That was Mr. Honoroff.

Q. Mr. Honoroff?

A. Yes.

Q. All right, what else was said?

595 A. Nothing much about this matter, except Mr. Knoll asked me to promise that if I straightened out—all the matters in the discussion were straightened out, I would not speak about my statement about his illegal entry and the others' entries to anybody.

Q. Now directing your attention to Government's Exhibit—

By Mr. Eben: Now, that is the vice of permitting that conversation, and I ask your Honor to rule on that conversation with respect to Leopold Knoll.

By the Court: Ladies and Gentlemen, this conversation now recited by the witness is admitted only as to Munio Knoll. It is not admissible as against any of the other defendants, and not to be considered by you as against any of the other defendants:

By Mr. Gerber: I make the motion, your Honor, that this conversation be stricken, and the jury instructed to disregard it. I am objecting to it as to Munio Knoll for the purpose of the record.

By the Court: On what ground?

596 By Mr. Gerber: On the ground, your Honor, it has nothing to do with the conspiracy. That is all over. If the alleged conspiracy existed, it was all over by that time, and it is not a statement by Munio Knoll himself, but by other people present at the time who were making statements impugning things to Munio Knoll about past events. Munio Knoll cannot be bound by statements of other people about what they think Munio Knoll did, your Honor.

By the court: I think the conversation is admissible. Overruled.

By Mr. Downing:

Q. Directing your attention to Government's Exhibit 24, marked for identification, I ask you to look at that, and I ask you if you have seen that document before.

A. May I make a statement?

By the Court: Yes.

By the Witness: Your Honor, I interpreted the question that the United States Attorney asked me wrongly, and I gave a wrong answer. This conversation did not take place June 5th.

By the Court: If you made an error, you have a
596A right to correct it.

By Mr. Downing:

Q. What was the date of the conversation?

A. The conversation as I now state it took place on, I believe, on Saturday, September 18th.

Q. In September?

A. In September, not on June 5th.

Q. What year was that?

A. 1948.

Q. But with respect to the conversation, it was as you have recited it?

A. Yes, the whole conversation took place, but on a different date.

Q. Now with respect to Government's Exhibit 24, have you seen that document before?

A. Yes, sir.

Q. Can you identify all the pictures in that document?

A. I can.

Q. Were you present at the time that photograph was taken?

A. Yes, I was.

Q. Where was it taken?

597 A. It was taken here in Chicago in a night club, I believe.

Q. Do you remember approximately when it was taken?

A. It was taken in the evening, either on June 4th or June 5th, in the evening.

Q. What year was that?

A. 1948.

Q. Is Government's Exhibit 24, which you have there, a true and correct photo of the people who were with you at that time and place?

A. It is.

Q. Commencing with the right side of the picture, will you identify the persons whom you see in it?

A. Mania Romankiewicz, my wife, myself, Mr. Weissman and Mr. Knoll.

Q. When you say Munio Romankiewicz, you also mean Munio Knoll, and also by Mania Romankiewicz, you mean Mania Knoll?

A. That is right.

Q. Was the photo obtained at that time and place?

A. Yes, sir.

Q. Now, prior to the date on which this photograph, Government's Exhibit 24, marked for identification,
598 was taken, had you had occasion to visit the residence of Munio Knoll here in Chicago?

A. Yes.

Q. When did you visit that residence?

A. In the morning of June 5th.

Q. Approximately what time of the morning was that?

A. About nine o'clock.

Q. Who was present at that time?

A. Mr. Munio Knoll and Mrs. Mania Knoll and my wife.

Q. Where was that apartment located, if you recall?

A. Maypole Avenue.

Q. Here in the City of Chicago?

A. Yes, sir, in Chicago.

Q. Do you recall what floor of the building it was on?

A. I believe it was the third floor.

Q. Do you recall what size of apartment it was?

A. A small apartment.

Q. Do you recall how many rooms there were in it?

A. Yes, sir.

Q. How many?

A. Three rooms.

Q. What type of rooms were they?

599. A. Well, one was a small bed room and one a small living room and kitchen, and a bath room.

Q. Then it was on that night, was it, you then proceeded to this club at which this picture I last showed you was taken, is that right?

A. No, as I said before, it may have been the 4th or the 5th.

Q. Now, after you were at this particular club at which the picture was taken I have just shown you, when did you next have occasion to see the defendant Munio Knoll?

A. On Sunday. I may be wrong in the dates, but I believe it was Sunday June 7th.

Q. Is this still in 1948?

A. 1948.

Q. You are not quite sure of the date, however, is that right?

A. I am quite sure that Sunday was the 7th, but I now realize I said Saturday the 5th, meaning the 6th, and the 4th Friday, meaning the 5th.

Q. It was that week end?

A. That is right.

Q. The first week end in June of 1948?

A. That is right.

600. Q. When did you next see the defendant Munio Knoll after this visit there at the club, the night club at which this photograph, Government's Exhibit 24 was taken?

A. I don't understand which day after which day was it. Was it after Saturday you mean?

Q. I show you Government's Exhibit 24 marked for identification, and ask you with relation to the date that this photograph was taken when did you next see the defendant Munio Knoll?

A. I don't know when that was taken, Friday or Saturday, but I believe it was Friday.

Q. After this then, when did you next see him?

A. On Saturday. It would have been in his apartment in the early morning at nine o'clock.

Q. All right. That is the time you have referred to in your testimony, is that right?

A. That is right.

Q. Now directing your attention to Government's Exhibit 24 marked for identification, I ask you to look at that, and ask you if you have seen that before?

A. I did.

Q. I ask you if you were present at the time that 601 photo was taken?

A. I was.

Q. Where was that photo taken?

A. In the night club here in Chicago on June 7th.

Q. On June 7, 1948?

602 A. It was on Sunday.

Q. On Sunday, around June 7, 1948, is that right?

A. Yes.

Q. Could you identify the parties who were present and identified in that picture?

A. Yes, sir.

Q. Starting at the right hand side of the picture, will you identify them for the Court and jury, the different persons whom you see in that photograph?

A. That is the daughter of Mrs. Wickers, myself, an entertainer in the night club, Mrs. Mania Knoll, my wife, Mr. Munio Knoll, Mrs. Wickers and Mr. Weisman.

Q. Is that a true and correct photo of the people who were with your group at that time and place?

A. Yes, sir.

Q. Was that photograph obtained at that particular time and place?

A. It was.

Q. Now, directing your attention to after that particular evening and time, when did you next see the defendant, Munio Knoll?

A. About 4 a. m. the next morning.

Q. Where did you see him at that time?

603 A. In an apartment on Maypole avenue.

Q. Who was with you at that time?

A. My wife came with me.

Q. Who did you see at the apartment?

A. Mr. Weisman and Mr. Knoll and Mrs. Mania Knoll.

Q. Where was Mr. Weisman at that time?

A. Mr. Weisman opened the door for us.

Q. Where was Munio Knoll and Mania Knoll?

A. They were in bed.

Q. They were in what room?

A. They were in the bed room.

Q. Did you see in the bed room at that time and place?

A. That is right.

Q. Where were you going at that particular time; on the morning of that day?

A. We were going to New York.

Q. Who was going to New York?

A. Myself and my wife and Mr. Munio Knoll.

Q. Did you thereafter then go to New York with the defendant Munio Knoll and your wife?

A. Yes, I did.

Q. Now, directing your attention to the defendant Regina Treitler, approximately when did you first
604 approximately meet her?

A. On Sunday, I believe September 19th.

Q. What year was that?

A. 1948.

Q. Where did you meet Regina Treitler?

A. At her apartment.

Q. Who was present at that time?

A. My wife, Mr. Weisman, and myself.

Q. Did you have a conversation at that time regarding the coming into the United States of Munio Knoll and Leopold Knoll or anyone else?

A. I did.

Q. Will you relate what was said at that time and place?

By Mr. Gerber: That is objected to on behalf of Munio Knoll.

By Mr. Eben: Also on behalf of Leopold Knoll.

By the Court: I will hear it and rule on it after I hear it.

By Mr. Downing:

Q. Will you proceed and answer the question?

A. I mentioned to Mrs. Treitler the fact that Mr. Munio Knoll and Mania Knoll and Pauldi Knoll—

By the Court: Who is that?

605 By the Witness: Leopold Knoll. I mentioned that they had come in illegally, and we were discussing it, and Mrs. Treitler said that Munio Knoll and Mania Knoll had been nothing but trouble to her since they came here, and that she was very sorry that she helped them to come to this country. She called Mr. Knoll a gestapo agent and a nazi and the black sheep of the family; and she was very put out about him. The discussion kept on going about that manner.

By Mr. Downing:

Q. Was it about the same—

A. Yes, sir. Then she suggested that we go and meet Mr. Treitler.

Q. Thereafter, did you meet Mr. Treitler?

A. I did.

By Mr. Gerber: Your Honor, I move all this be stricken out as to Munio Knoll.

By the Court: Who was present at the time of this conversation, Mr. Haberman?

By the Witness: Mrs. Treitler, my wife, Mr. Weisman, and myself.

By the Court: The conversation just detailed by the witness is admissible, ladies and gentlemen, against 606 Mrs. Regina Treitler only, and it is not to be received or considered by you against any of the other defendants.

By Mr. Sokol: Let the record show I object to the Court's ruling.

By the Court: What is the ground of your objection?

Mr. Sokol: This is a conversation that is alleged to have taken place in September, 1948. That is the grounds of my objection.

By the Court: Overruled.

By Mr. Gerber: I would like to make an objection in the record that the testimony that he is giving is highly

prejudicial to my client. I would like to make a motion for a mistrial, in view of that.

By the Court: Motion denied.

By Mr. Downing:

Q. During the period of time that you were acquainted with Muno Knoll and Mania Knoll, did you know Mania Knoll by any other name than the last name which you have referred to in your testimony?

A. Yes, sir.

Q. What was the last name you knew Mania by?

607 A. Romankiewicz.

Q. Also Mania Knoll?

A. That is right.

Q. Was she at any time ever introduced to you as Mrs. Maria Lutwak?

A. No.

By the Court: What is this name you referred to? Spell it.

A. P-a-u-l-d-i.

By the Court: Who does that refer to?

A. Leopold.

By Mr. Downing: Your Honor, at this time, the Government would like to offer in evidence Government's Exhibits 22, 23, 24 and 25, each marked for identification, and they may cross examine.

By Mr. Eben: I have no cross examination of the witness. I do not regard any of these exhibits as being admissible against my client, Leopold Knoll, and I therefore object to them. And I also would move to strike out all the testimony of Mr. Haberman, and the jury instructed to disregard it on the ground that by it the Government has attempted to impeach its own witness, 608 a witness for whose credibility they vouched when they put her on the stand, namely, Maria Lutwak. When they put her on, they put her on, I presume, thinking that the jury would believe her. Now they are trying to impeach her, and I move the Court to strike that testimony.

By the Court: Motion denied.

By Mr. Sokol: I would like to object to the statement regarding Regina Treitler, first, because it succinctly states that the defendant Treitler characterized her brother in an ignominious fashion, and it has no relation

to any admission, and no admission was made. And secondly, that the statement testified to by the witness with respect to her is a long statement, and it is immaterial and prejudicial.

By the Court: Motion denied.

By Mr. Gerber: I would like to make an objection to the admissibility of Government's Exhibits 22, 23, 24 and 25, on the ground that those photographs, in and of themselves, are immaterial to the issues in this case in every respect, and can only tend to create some sort of prejudice in the case, and I move that they be stricken, and that the jury be instructed to disregard any testimony with regard to the photographs or the identification of them.

By the Court: Motion denied.

By Mr. Bartoline: I make the same motion.

By the Court: Motion denied.

By Mr. Downing: May the photographs be received?

By the Court: They may be received.

By Mr. Downing: That is Government's Exhibits 22, 23, 24 and 25.

By the Court: They may be received.

Mr. Bartoline: I am making a motion, if your Honor please, that the photographs not be received, because they contain writings, and I think they are highly prejudicial in this case.

By the Court: Let me see them.

By Mr. Downing: Your Honor, I submit he said that is what he saw at the time he identified the pictures as being on the covers. He identified the handwriting of the one in red, on the inside cover.

By Mr. Bartoline: There are some writings on 610 there, too, if the Court please, which were not on the pictures at the time that the pictures were taken.

By Mr. Downing: Of course, that writing of the persons has been identified in the picture.

By the Court: I do not see anything wrong with Government's Exhibit 24 for identification. There is nothing there except the name of the restaurant, and the names of the photographer. It may be received.

By Mr. Eben: Generally?

By the Court: Yes.

-(Said document, so offered and received in evidence, was marked Government's Exhibit 24.)

By the Court: I do not see anything wrong with Government's Exhibit 25. "Scene in City of Chicago World Famous Inn and Restaurant."

As to Government's Exhibit 25 for identification—do you know who wrote this here?

By the Witness: Yes, sir.

By the Court: Who?

By the Witness: Mania Knoll.

By the Court: How much did she write?

By the Witness: She wrote this.

611 By the Court: Well, read what she wrote.

By the Witness: "To Eleanore and Morris, May 19, 1948. Mama."

By the Court: And the next word?

By the Witness: The next was written by Mr. Z. Romankiewicz. That is Munio Knoll.

By the Court: What is this following?

By the Witness: Following, "Well, done, Morris. Your friends, David and Blanche." That is David and Blanche Wiseman.

By the Court: Are you the Morris referred to?

By the Witness: Yes.

By the Court: Who wrote these names on the photographs?

By the Witness: They were written at the time I was questioned to identify them.

By the Court: These are the words you told about?

By the Witness: Yes, sir.

By the Court: I do not see anything wrong with that. It may be received.

(Said document, so offered and received in evidence, was marked Government's Exhibit 25.)

612 By the Court: Did you tell us about these names written around here?

By the Witness: Those two were written down when I was asking them to identify these people.

By the Court: You wrote them there?

By the Witness: No. I showed this to be Lutwak, and the man wrote down the names as I dictated.

By the Court: Who write it down?

By the Witness: The investigator.

By the Court: Oh, the investigator?

By the Witness: Yes.

By the Court: Do the names around there correctly identify the persons at the table?

By the Witness: Yes.

By the Court: Objection overruled. It may be received.

By Mr. Eben: I said I had no cross examination of this witness. I don't know about the others.

By Mr. Sokol: No cross examination.

By Mr. Bartoline: No cross examination.

By Mr. Gerber: No cross examination.

613 By Mr. Downing: No cross examination.

That is all, Mr. Haberman. Thank you.

(Witness excused.)

By Mr. Downing: May I have permission to show these to the jury?

By the Court: Yes.

By Mr. Sokol: I don't see the appropriateness of showing these pictures to the jury at this time. Let the record show my objection to it.

By the Court: Yes.

By Mr. Gerber: I object for Munio Knoll also.

By Mr. Eben: Also as to Leopold Knoll.

By the Court: Overruled.

By Mr. Bartoline: Also as to Lutwak.

By Mr. Eben: May we proceed, your Honor?

By the Court: The jury are looking at the photographs. They can't do two things at once very well.

654 By the Court: We will take a short recess, Ladies and Gentlemen.

(Whereupon the following proceedings were had out of the presence and hearing of the jury:)

By the Court: Let me speak to counsel a moment.

I have read Government's Exhibit 14. I have
655 read a copy of it, what purports to be a copy of it. In that copy counsel for the Government has indicated certain questions and answers which he has stated his intention of not reading unless counsel for defendant insists.

I think the judgment of counsel for the Government is good in that respect, and counsel for the Government will refrain from reading questions 2, 17—I will give you this.

By Mr. Downing: Yes, sir.

By the Court: 2, 17, 18, 19, 20, 21, 22, 23 and 29, and the answers thereto.

And if counsel for Munio Knoll wants to read those questions and answers he may do so, and take the responsibility therefor.

By Mr. Downing: Yes, sir.

By Mr. Gerber: Thank you, your Honor.

By Mr. Downing: If your Honor please, if counsel for Munio Knoll does not desire to and does not read them then at the proper time will it be proper to make a motion to strike them physically from the exhibits?

656 By the Court: Yes.

By Mr. Downing: Thank you.

By the Court: Take a short recess.

(Recess taken.)

657 By the Court: Proceed, gentlemen.

By Mr. Gerber: On behalf of the defendants, we appreciate your Honor's position, and we are entirely in accord with everything and every page in here, and agree that it be deleted with the exception of page 17. We would like to have that read or we will read it.

By the Court: Let me see it.

By Mr. Gerber: Otherwise, the rest of it may be left out.

By the Court: If you want it, you can have it.

By Mr. Gerber: Just page 17, your Honor. The others may be left out. We agree to that.

By Mr. Downing: If you have no objection to the Government counsel reading it, I will read it.

713 By the Court: We will recess at this time.

By Mr. Eben: Before you recess, your Honor, at this time, may we have an instruction to the jury that these two statements which were just read are not in evidence against Leopold Knoll and are not to be considered against him.

By the Court: These two statements that have been read are in evidence only against the defendant Munio Knoll, and nobody else, and you are to consider them only as against Munio Knoll, and nobody else.

By Mr. Gerber: Your Honor, I have a request to make at this time. I have been trying—

By the Court: You may be excused until ten o'clock tomorrow morning, Ladies and Gentlemen.

(Thereupon the jury was excused until 10:00 o'clock a. m. of the following day, January 12, 1951, and the following proceedings were had out of the presence and hearing of the jury:)

719

* * * Caption—No. 50 CR 464 * *

Chicago, Illinois,
January 12, 1951,
10:15 o'clock a. m.

Met pursuant to adjournment.

Present:

Mr. Downing

Mr. Owen

Mr. Gerber

Mr. Bartoline

Mr. Sokol

Mr. Eben

Mr. Watt

Mr. Weissbourd

And thereupon the following further proceedings were had herein, out of the presence and hearing of the jury:—

By the Clerk: Case on trial.

By Mr. Downing: If your Honor please, I have a correction here I would like to make for the record, in connection with the testimony of the witness Morris Haberman on page 538, line 6.

720 It refers to Government's Exhibit 3. I showed Mr. Haberman photographs only, and the number of the photograph was Government's Exhibit 23.

I would like to have that corrected.

By the Court: Any objection?

By Mr. Eben: No objection.

By the Court: All right.

By Mr. Downing: If your Honor please, there is one other statement I would like to make to the court before you bring in the jury, because I anticipate the jury would not be in here very long and they would be again out.

The next witness the Government intends to call is

Bess Osborne: There may or there may not be, I cannot anticipate, an objection to her testimony. I am mentioning it now before the jury is brought in so that if there is to be an objection to her testimony I think it would be more expeditious if it is made now and discussed, and then we would not have to bother the jury, bringing them in and sending them out again.

By the Court: All right.

721 By Mr. Eben: At the same time, gathering from what transpired yesterday, that the District Attorney was going to proceed by reading statements, I would also like to know now if you propose to read the other statements which were in evidence at any time before the close of your case.

By Mr. Downing: Before the Government rests the Government, with leave of court anticipates reading all the exhibits, the pertinent parts of exhibits in the case to the jury.

By Mr. Gerber: Counsel is right in his anticipation. Since he has informed the court the next witness will be Bess Osborne, the wife of Munio Knoll, on his behalf I wish now to object to the competency of her testimony as his wife, and ask for voir dire examination.

I intend to cite legal authorities and invoke the decisions that have been presented heretofore in connection with objection to the testimony of Maria Lutwak when she took the stand.

722 By the Court: You don't need any voir dire examination. There has been plenty of testimony here which certainly makes it a question of fact as to whether this woman is the wife of Munio Knoll. I will submit it to the jury and let this woman testify. You save your record.

By Mr. Gerber: That is what I want to do.

By the Court: Make it right now. Make all the objections you want.

By Mr. Gerber: All right. I am objecting to the testimony of Bess Osborne on the grounds that she is an incompetent witness, being the wife of the defendant Munio Knoll, alias Zygmunt Romankiewicz, and I ask for a voir dire examination on that score.

By the Court: No—

By Mr. Gerber: For the purpose of the record I want to show I am asking for it.

By the Court: All right. I say to you, when she is on the stand you can ask her all the questions you have a mind to, and it may be assumed you had your voir dire and have had those answers.

By Mr. Gerber: Right.

723 By the Court: All the answers which she then makes.

By Mr. Gerber: I would like the record to show also in connection with my objection that I intend to cite all of the authorities and would like to invoke them as a part of my objection, all of the authorities legally and the decisions which have been heretofore invoked in the trial of this case in connection with the objection heretofore made to the testimony of Maria Lutwak when she took the stand.

By the Court: Objection overruled.

*By Mr. Sokol: That motion with respect to Bess Osborne's incompetency is also made on behalf of Regina Treitler.

By Mr. Eben: And Leopold Knoll.

By Mr. Bartoline: And Marcel Lutwak.

By Mr. Weissbourd: I call your Honor's attention to the case of Miles v. United States—

By the Court: Is that the case that says she cannot testify against anybody because, if she testifies as to a conspiracy, she will be testifying against her spouse? Is that the case?

724 By Mr. Eben: No.

By Mr. Weissbourd: I don't think so. This case has not yet been cited.

By the Court: What does that say?

By Mr. Weissbourd: That says that where the issue the jury is to decide is whether there was a valid marriage, the person, the validity of whose marriage is questioned, is not competent to testify against the husband because the court is invading the province of the jury. This is the case of the United States Supreme Court, and also I can cite a more recent case which still adheres to this view.

By the Court: Well, I will submit it to the jury.

By Mr. Watt: I understand your Honor's ruling, that there is sufficient evidence here in your opinion to indicate she is not the wife of Munio Knoll, and that is an issue which you will let the jury decide.

By the Court: Yes.

By Mr. Watt: May I further point out to your Honor that that ceremony took place in Paris, France, and there has been no proof offered by the Government as to
725 what the law of France is as to the validity of marriage, and the validity of the marriage must be determined by the law of the place where the marriage was contracted, and the prosecuting attorney has not sustained his burden by proving what that law is.

By the Court: I would assume the law of Paris, France, is the same as the law of Chicago, Illinois, with respect to people going through something that is a mockery, which they did not intend to be a marriage.

By Mr. Downing: The law of France is that the law of the countries where the foreigners are born, the law of the persons applies.

By Mr. Sokol: Mr. Downing has not introduced any law to that effect.

By Mr. Watt: That is part of the prosecutor's burden, to show the law of the place of the marriage.

By the Court: No.

By Mr. Eben: We would like to make an offer of proof.

By the Court: The law of France, if it is pertinent, is the same as in Illinois, that if people go through a
726 mockery it is not a marriage.

By Mr. Eben: May we make an offer of proof?

By Mr. Gerber: I want to make an offer of proof.

By the Court: Go ahead, make it.

By Mr. Gerber: I would like to call upon Mr. Downing to produce the marriage certificate between Bess Osborne and Munio Knoll because, according to Mr. Knoll—

By the Court: I am not going to fuss around here. Are you going to put that in?

By Mr. Downing: I can. I have got it.

By the Court: Produce it for them. They can show it on cross examination.

By Mr. Downing: All right, sir.

By the Court: Anything else?

By Mr. Downing: I have nothing else, your Honor.

By the Court: Bring in the jury.

727 (Whereupon the following proceedings were had in the presence and hearing of the jury:)

By Mr. Downing: Bess Osborne.

BESS OSBORNE, called as a witness on behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Downing.

Q. State your name, please.

A. Bess Osborne.

By the Court: Bess Osborne?

By the Witness: Yes.

By the Court: —b-o-r-r-e?

By the Witness: —b-o-r-n-e.

By Mr. Downing:

Q. What is your address, please?

A. 4646 Sheridan.

Q. At Chicago, Illinois?

A. Chicago.

Q. What is your business or occupation at the present time?

A. Stenographer.

Q. Have you ever been a member of the United States military forces?

A. Yes, I have.

728 Q. What branch?

A. The U. S. Navy.

Q. And from approximately what date until approximately what date?

A. January 25, 1943 until December 2, 1945.

Q. Did you receive an honorable discharge certificate on leaving the United States Navy?

A. Yes, I did.

Q. Are you acquainted with the defendants Munio Knoll, known as Zygmunt Romankiewicz, Marcel Lutwak, Regina Treitler and Leopold Knoll?

A. Yes.

By Mr. Downing: May we have a stipulation that the witness can identify the defendants in the court room?

By Mr. Sokol: Yes.

By Mr. Gerber: Yes.

By Mr. Eben: As far as I am concerned, it is all right.

By Mr. Gerber: I would like to renew my objection for the purpose of the record to all of this testimony on the grounds of the incompetency of the witness.

By the Court: Overruled.

By Mr. Gerber: I would like to have a continuing
729 objection to all of this testimony.

By Mr. Downing:

Q. Have you ever been married?

A. Yes, I have.

Q. When was the first time you were married?

A. In 1934.

Q. To whom were you married?

A. William Osborne.

By the Court: That last gentleman over there must hear everything you say. Will you speak loud enough so that he can hear you?

By the Witness: Yes.

By Mr. Downing:

Q. Did you obtain a divorce from William Osborne?

A. Yes, I did.

Q. Approximately what date was that?

A. December, 1941.

Q. Directing your attention to November, 1947, did you participate in a marriage ceremony?

A. Yes, I did.

Q. Where at?

A. In Paris, France.

Q. And with whom?

A. With Zygmunt Romankiewicz.

730 Q. Is that the defendant Zygmunt Romankiewicz that is in the court room?

A. Yes, it is.

Q. Who else was present at that time and place?

A. Leopold Knoll and Bernard Wireberg.

Q. Those were the only persons present besides yourself and Zygmunt Romankiewicz, is that right?

A. Yes.

Q. Whereabouts in Paris, if you recall, did this marriage ceremony take place?

A. At the City Hall.

Q. How long had you known Zygmunt Romankiewicz at the time the marriage ceremony was performed?

A. About one week.

Q. Under what name did you know him?

A. Zygmunt Romankiewicz.

Q. Is that the name that he used at the time the marriage ceremony was performed?

A. Yes.

Q. Where did you first meet Zygmunt Romankiewicz?

A. In Paris, France.

Q. And it was approximately a week before you participated in the marriage ceremony?

A. Yes.

731 Q. Who introduced you to Zygmunt Romankiewicz?

A. Regina Treitler, Mrs. Regina Treitler.

Q. And that is the defendant Regina Treitler here that you see in the court room?

A. Yes.

Q. Where did Mrs. Treitler introduce you to Zygmunt Romankiewicz?

A. At the Paris airport.

Q. Prior to the time you were in Paris, France, in November, 1947, had you had occasion to meet any of the other defendants?

A. I met Marcel Lutwak and Mrs. Treitler.

Q. And directing your attention to Marcel Lutwak, approximately when, as best you recall, did you first meet him?

A. About the first or second week of September, 1947.

Q. And where were you at that time?

A. I was at the place of business of Mrs. Zapler on Madison street near Central Park avenue.

Q. Is that Mrs. Anne Zapler?

A. Mrs. Anne Zapler.

Q. And who introduced you to Marcel Lutwak?

A. Mrs. Zapler.

Q. Did you have any conversation with Marcel
732 Lutwak and Anne Zapler at that time and place?

A. Yes, I did.

Q. Will you relate to the court and jury the conversation that took place at that time and place?

By Mr. Sokol: I object.

By Mr. Eben: I object also on behalf of Leopold Knoll.

By Mr. Gerber: In addition to my other objection, as to

By the Court: Objection overruled.

By Mr. Gerber: In addition to my other objection, as to

Munio Knoll, I object on the ground of hearsay, out of the presence of the—

By the Court: Overruled.

By Mr. Eben: I have the same objection, of course.

By the Court: Overruled.

By Mr. Downing:

Q. Will you relate, in substance, as best you can, the conversation you had with Marcel Lutwak and Anne Zapler at that time and place?

A. Mrs. Anne Zapler had nothing to say, but Mr. Lutwak told me about an uncle he had in Europe, who had suffered brutalities by the Nazis, and whom he and
733 his family wanted to bring to this country because he needed medical care and—

Q. Do you recall the name of the uncle that—

A. It was Leopold Knoll.

Q. Leopold Knoll. And do you recall anything else that Marcel Lutwak told you at that time and place?

A. He said he wanted a woman who had been in the service to marry this uncle and bring him to this country.

Q. Did he say anything else to you at that time and place?

A. Yes. He said he would pay one thousand dollars.

734 Q. Was there anything else said, that you can recall?

A. Well, that is about the substance of the conversation.

By Mr. Eben: I cannot hear. Will you please keep your voice up, Miss Osborne.

By Mr. Downing:

Q. Now, thereafter, did you have occasion to meet Regina Treitler.

A. Yes. I met her about one week later in her home.

Q. Where did you meet her?

A. In her home.

Q. Who was present at that time and place?

A. There were two sisters of Mrs. Treitler, Mania and Marcel. There were others, whom I do not recall.

Q. Did you have any conversation—

By the Court: Just a minute. I am not clear who was there.

By Mr. Downing: There were two sisters of Mrs. Treit-

ler, she said, Mania, Marcel and Mrs. Treitler, and others she did not recall.

By the Court: Now, Marcel who?

By the Witness: Marcel Lutwak.

735 By Mr. Downing:

Q. Marcel Lutwak, that is the defendant in the court room?

By the Court: Mania who?

By the Witness: I did not know her name at that time, her last name is Knoll.

By the Court: What?

By the Witness: Mania Knoll.

By Mr. Downing: That is the Mania who testified previously.

By the Court: Mania, who has already testified?

By Mr. Downing: That is right.

By the Court: Mania Knoll, is that it?

By the Witness: Yes, sir.

By the Court: Where was this, in Chicago?

By the Witness: At Mrs. Treitler's home.

By the Court: All right.

By Mr. Downing:

Q. Do you recall where Mrs. Treitler's home is, or was at that time?

A. On Central Park avenue near Madison.

Q. Central Park near Madison in Chicago?

A. Yes, sir.

736 Q. Now, will you relate any conversation you had at that time and place concerning this matter about which you have testified you had a conversation with Marcel Lutwak?

By Mr. Gerber: Objected to, in addition to my previous objection, Munio Knoll was not present.

By the Court: Overruled.

By Mr. Eben: The same objection as to Leopold.

By the Court: Overruled.

By the Witness:

A. Mrs. Treitler told me about her brother who she would like to move to this country. She said they had been supporting him in Europe, and he was badly in need of medical care, and she told me about all the sufferings that he had endured, and she and her family wanted very much to bring him here so that he could have proper attention. And she wanted someone to go to Europe to

marry him, a woman who had been in the service, and bring him to this country.

By Mr. Downing:

Q. Did she discuss anything about any terms in connection with going to Europe at that time?

A. I don't recall.

Q. Now, thereafter, did you have occasion to meet and talk with Marcel Lutwak?

A. Yes, sir.

737 By Mr. Eben: Same objection.

By the Court: Overruled.

By Mr. Downing:

Q. Approximately how long after this meeting at Regina Treitler's house did you have occasion to talk to the defendant Marcel Lutwak again?

A. It might have been about two or three weeks after my visit at Mrs. Treitler's.

Q. Where did you meet Marcel Lutwak at that time?

By Mr. Gerber: Your Honor, I would like to ask that some specific or reasonable date be fixed.

By Mr. Downing:

Q. Approximately when would you say this conversation you have reference to took place, two or three weeks after the meeting at Mrs. Treitler's?

A. It was about the last week of September, 1947.

Q. Do you recall where this conversation took place?

A. I had lunch with Marcel at a restaurant down on Dearborn and Jackson.

Q. Dearborn and Jackson, here in Chicago?

A. In Chicago.

Q. Anybody else present at that time and place?

A. No.

738 Q. Now, will you relate anything that was said at that time by Marcel or yourself, concerning this matter?

By Mr. Eben: Objection on behalf of Leopold Knoll.

By the Court: Overruled.

By Mr. Gerber: Objection on behalf of Munio Knoll.

By the Court: Overruled.

By Mr. Sokol: The same on behalf of Mrs. Treitler.

By the Court: Overruled.

By Mr. Downing:

Q. Proceed.

A. They were just matters concerning the trip to Paris. They were speaking about having me take my service papers to France, and the means of transportation, my going there with Mrs. Treitier, and the necessary shots that I would have to have before leaving this country, things of that nature were discussed.

Q. Do you recall anything more specifically that you discussed, other than what you have mentioned?

A. Well, on one of these visits, about two weeks before I left for Paris, I visited Marcel at his office, and we had a Coke together in the accompanying lunch room, and he told me he had another brother—

By Mr. Eben: Objected to on behalf of Leopold Knoll.

By the Court: Overruled.

By Mr. Gerber: Objected to on behalf of Munic Knoll.

By the Court: Overruled.

By Mr. Downing:

Q. Go ahead.

A. He had another uncle who was in similar straits as his uncle Leopold, and furthermore, that his uncle had been married, and his wife was in this country and they wanted to bring about a reunion between this uncle and former wife, and he asked if I would marry the second uncle Zygmunt, rather than Leopold.

Q. Is that the first time you had heard about Zygmunt?

A. That is the first time.

Q. All right. Was there anything else that was said?

A. He asked me how much money I wanted for making this trip and marrying the uncle.

Q. What did you say?

740 A. I said I would like to have enough to cover my expenses.

Q. What did Marcel say about that?

A. He asked me what that would be. I said I would rather wait until after the trip. I could tell better at that time what my expenses might be. But he asked that I name a figure, and I said \$250. He raised it to \$500, and asked me if that would be enough, and I agreed.

Q. All right. Now, was there any further discussion about the details of the trip that you can recall?

A. Nothing except that I would fly and all of my expenses would be taken care of in Paris.

Q. Was there anything else that you can recall now that you discussed with Marcel Lutwak?

A. Well, I had mentioned at the luncheon this was—

Q. This was back at the luncheon of Regina Treitler's?

A. Yes, sir, that I did not have clothes. I did not have clothes to wear for the trip, and I was told to buy what

Q. By whom were you told?
I needed.

A. By Mrs. Treitler.

741 Q. Thereafter did you buy some clothes?

A. Yes, sir.

Q. Did you receive money for the payment of those clothes?

A. I received money from Marcel.

Q. Approximately how much was that, do you recall?

A. \$100.

Q. In relation to when you left, approximately when was that, that you received the \$100, prior to the time you left?

A. It was about a month before, or three weeks to a month before.

Q. Three weeks to a month before you left?

A. Before the trip.

Q. Now, prior to taking your trip, madam, did you receive your ticket?

A. I received no ticket until—

Q. Did you make any payment of any of your money for a ticket to Paris, France?

A. No, I did not.

Q. Prior to the time you left, did you make out an application for a passport to leave the United States?

A. I did.

Q. Where did you make out that passport applica-
742 tion?

A. In this building.

Q. Was there anyone with you at that time and place?

A. Marcel it was.

Q. Was he the only one that was with you at that time and place?

A. He was the only one.

Q. Approximately how long was that before the time you left?

A. That was about two months before.

Q. Did anyone sign the passport application as your identifying witness?

A. Marcel did.

Q. Now, I believe you mentioned earlier in your testimony, concerning a statement of Marcel Lutwak, about your being in the service. Did you take your Navy honorable discharge certificate with you?

A. He asked that I take it with me.

Q. And you did take it with you to Paris?

A. Yes, I did.

Q. Did you take with you your divorce papers?

A. Yes, I did.

Q. Who asked you to take those with you?

A. Marcel did.

743. Q. Now, after this meeting at Regina Treitler's that you have mentioned, did you have occasion to discuss this same matter with Regina Treitler prior to the time you left Chicago?

A. I did not see Regina Treitler again until the day of our departure.

Q. Do you recall what date that was, madam?

A. It was October 25, 1947.

Q. From where did you leave?

A. We left from the Municipal Airport, Chicago.

Q. Who was with you at that time when you left Chicago?

A. There was Munio Knoll, Marcel Lutwak, and other members of that family, whose names I do not recall.

Q. Now, do you recall what airline it was that you left Chicago on?

A. It was a TWA.

Q. After you left Chicago, where did you disembark from the plane?

A. At Paris, France.

Q. Approximately how long did it take you to go from Chicago to Paris, France, do you recall?

A. About twenty-seven hours.

Q. So that you arrived in Paris some time on the 744 second day, was it, following your leaving?

A. Yes, sir.

Q. Now, at the time you arrived in Paris, France, did anyone meet you and the defendant Regina Treitler?

A. Zygmunt Romankiewicz and Bernard Wireberg.

Q. After you left the airport, where did you go?

A. I went to the le Khedive Hotel in Paris.

Q. Is that where you resided while you were in Paris?

A. Yes, sir.

Q. Under what name did you register?

A. Under the name of Bess Osborne.

Q. If you know, at what hotel did the defendant Regina Treitler reside while she was at Paris?

A. At the le Khedive.

Q. Did you share any room with the defendant Regina Treitler?

A. No, I had my own room.

Q. At that time, do you know where Zygmunt Romankiewicz was residing in Paris?

A. He was at the same hotel.

Q. Then do you recall the date of this marriage ceremony in November?

A. November 3rd.

745 Q. In connection with the marriage ceremony, will you tell the Court and jury what took place with respect to the arrangement while you were in Paris prior to the ceremony?

By Mr. Eben: I object to that on behalf of Leopold Knoll.

By the Court: Overruled.

By the Witness:

A. Well, Zygmunt and I went to a lawyer's office in Paris, and the secretary there made all the arrangements. She filled out the necessary papers, and I signed whatever was necessary, and then we went through the American Consulate there. She took care of all the papers and made all the arrangements, and I just signed the papers.

By Mr. Downing:

Q. Now, at the time of the marriage ceremony, did you obtain a wedding ring of any description from the defendant Zygmunt Romankiewicz?

A. No.

Q. Have you since that date obtained a wedding ring of any type from Zygmunt Romankiewicz?

A. No.

Q. Your answer is no?

A. No.

746 Q. After the marriage ceremony, where did you reside in Paris?

A. I remained at the le Khedive Hotel until November 9th, or about that time, and from there I moved to the Royal Monceau Hotel in Paris.

Q. Subsequent to the marriage ceremony and while you were living at the le Khedive Hotel in Paris, with whom did you live?

A. I lived by myself.

Q. While you were living at the Royal Monceau Hotel, in Paris, prior to the time of your departure therefrom, with whom did you live?

A. By myself.

Q. Now, after participating in the marriage ceremony with the defendant Zygmunt Romankiewicz, how long did you remain in Paris?

A. I remained there about five to seven days.

Q. Do you recall approximately what day it was you left Paris?

A. I left Paris on the 12th of November.

Q. November 12th? This was still in 1947?

A. 1947.

Q. While you were in Paris, did you have any conversation with the defendant Regina Treitler concerning
747 the matter you had discussed prior to the time you left Chicago?

A. She mentioned—

By Mr. Eben: Objected to on behalf of Leopold Knoll.

By the Court: Overruled.

By the Witness:

A. She mentioned on two or three occasions that I would receive one thousand dollars.

By Mr. Gerber: Objected to on behalf of Munio Knoll and ask that it be stricken, your Honor.

By the Court: Overruled. Denied.

By Mr. Downing:

Q. Was there anyone else present at the time you had this conversation with Regina Treitler?

A. I don't recall.

Q. All right. Now, while you were in Paris, France, in November, 1947, after the marriage ceremony that you have related, did you attend another marriage ceremony?

A. I attended the marriage ceremony of Grace Klemner to Leopold Knoll.

Q. When did you first see Leopold Knoll?

A. I met him the day of my arrival.

748 Q. The ceremony that you also attended was between Grace Klemtner and Leopold Knoll, is that right?

A. Yes, sir.

Q. Do you recall approximately what date that was?

A. November 1st, 1947.

Q. When did you first see Grace Klemtner?

A. I met her on the morning of November 3, 1947.

Q. Did she attend the marriage ceremony that you went through with Zygmunt Romankiewicz?

A. No.

Q. Now, at the time of this marriage ceremony between Leopold Knoll and Grace Klemtner, who else was present?

A. Zygmunt Romankiewicz.

Q. And yourself?

A. And myself.

Q. Where did that marriage ceremony take place? Was that at the same place that your ceremony took place?

A. Yes.

Q. Now, this Leopold Knoll that you have mentioned, is that the defendant Leopold Knoll you see in the court room?

A. Yes.

749 Q. During the time you were in Paris in November, 1947, were you acquainted with where Grace Klemtner resided?

A. Yes, sir.

Q. Where did she reside at the time you first met her?

750 A. At the le Khedive.

Q. Thereafter, did she reside at any other hotel?

A. Yes, she resided at the Royal Monceau.

Q. Do you know approximately when she commenced to reside at the Royal Monceau?

A. About three or four days after her marriage.

Q. Was that on or about the time you moved to the Royal Monceau?

A. I moved there about three days after Grace did.

Q. Were you acquainted with the room that she used at the Hotel Royal Monceau?

A. We had adjoining rooms.

Q. Did anyone else to your knowledge share her room?

A. Not to my knowledge.

Q. While you were living at the Royal Monceau, to your knowledge, did the defendant Leopold Knoll reside at the Royal Monceau?

By Mr. Eben: To her knowledge, she cannot tell us. It is an ambiguous question. They had adjoining rooms. Apparently any answer would meet the occasion, unless she policed all the rooms in the hotel in a kind of
751 house detective fashion and it is prejudicial.

By the Court: You may cross examine her. You may answer, Madam.

By Mr. Downing: Will you read the question?

(Question read.)

By the Witness:

A. No.

By Mr. Downing:

Q. Now, prior to the time you left Chicago, did you have any discussions with anyone concerning how long this marriage that you were to go through would last?

A. Yes. Marcel Lutwak told me that in six months I could have a divorce.

By Mr. Gerber: Objected to and move it be stricken as to Munio Knoll.

By the Court: Denied.

By Mr. Eben: Also as to Leopold Knoll, your Honor.

By the Court: Denied.

By Mr. Downing:

Q. Where did you have this conversation with the defendant Marcel Lutwak?

A. This was during our first conversation at the place of business of Mrs. Anne Zapler.

752 Q. That is the time you previously related as having a conversation, is that right?

A. Yes, sir.

Q. And I believe you stated you left Paris on November 12, 1947, is that right, ma'am?

A. That is right.

Q. With whom did you leave?

A. I left with Zygmunt Romankiewicz.

Q. How did you leave?

A. We left by plane.

Q. For where?

A. For Brussels, and from there to the United States.

Q. Did you purchase either your ticket or that of the defendant Zygmunt Romankiewicz for the trip between Paris and Chicago?

A. No, I did not.

Q. At what port did you enter into the United States?

A. New York.

Q. Approximately what day, do you recall?

A. November 13, 1947.

Q. With whom?

A. With Zygmunt Romankiewicz.

753 Q. Mrs. Osborne, I show you Government's Exhibit 2 in evidence and ask you to look at that, and ask you if you have seen that before?

A. Yes, I have seen this before.

Q. When did you first see that, as best you recall?

A. It was at the port of entry in New York.

Q. Were you present when that document was filled out?

A. Yes; I was.

Q. Who else was with you at that time and place?

A. Zygmunt Romankiewicz.

Q. Now directing your attention to the signature on the document, I ask you, were you present when that signature on the line with the printing, "Signature of alien", were you present when that signature was placed thereon?

A. Yes.

Q. By whom was that placed thereon?

A. By Zygmunt Romankiewicz.

Q. I ask you if this document was prepared in connection with the entry of Zygmunt Romankiewicz into the United States?

A. Yes, sir.

Q. Now directing your attention to Government's
754 Exhibit 1, marked for identification, and with respect to that portion of it entitled, "Information Sheet," I ask you to look at that and ask you if you have seen the original of that before, ma'am?

A. Yes, I have.

Q. Approximately when did you first see the original of that document?

A. At the port of entry, New York.

Q. I ask you who was present at the time that was prepared.

A. Zygmunt Romankiewicz and myself.

Q. I ask you if this document was prepared in connection with the entry of Zygmunt Romankiewicz into the United States?

A. It was.

Q. Now, at the time these documents I have just shown you were filled out, was your Navy honorable discharge certificate examined by the Immigration Inspector who was present?

A. Yes.

Q. After reaching New York on November 13, 1947, where did you next go?

A. Zygmunt and I took a plane to Chicago.

Q. Did you pay for the tickets?

755 A. No, I did not.

Q. When did you reach Chicago then?

A. We reached Chicago on the night of November 13, 1947.

Q. Where did you reach Chicago at that time?

A. Chicago Municipal Air Port.

Q. Do you recall if anyone met you at the Chicago Municipal Air Port at the time you and the defendant Zygmunt Romankiewicz reached there?

A. There was Marcel Lutwak, Mania Knoll and there were others whose names I cannot recall.

Q. After you reached the air port then, will you tell the court and jury what happened?

A. Well, Marcel and I took a cab to the Bellaire Hotel in Chicago. Zygmunt and his people took a cab elsewhere. I don't know where they went.

By Mr. Eben: I would like the record to show, may it please the Court, my continuing objection to any events or declarations or acts occurring after the arrival in the United States.

By the Court: Overruled.

By Mr. Sokol: Similar objection for Mrs. Treidler.

756 By the Court: Overruled.

By Mr. Downing:

Q. Then after reaching the Bellaire Hotel, did you reside there for a short period of time?

A. Yes, I did.

Q. Did anyone reside with you at that place?

A. No.

Q. Now, when did you next see the defendant Zygmunt Romankiewicz?

A. I saw him about three days after our arrival here.

Q. Who else was present?

A. Marcel Lutwak.

Q. Where did you see the defendant Zygmunt Romankiewicz and Marcel Lutwak?

A. We met at the Admiral Restaurant on Dearborn Street near Madison.

Q. Here in downtown Chicago?

A. In Chicago.

Q. About what time of the day was that, do you recall?

A. It was in the afternoon.

Q. Who notified you of that particular meeting?

A. Well, at the time I am talking—

757 By Mr. Gerber: I object to the form of the question. It presupposes something, and it is leading. It presupposes that somebody had invited her. I think she ought to tell in her own way what happened.

By the Court: How did you happen to go there, Madam?

By the Witness: Marcel and myself arranged the meeting at the time of my arrival.

By Mr. Downing:

Q. Was that after you had seen Marcel, after you arrived here in Chicago that you arranged the meeting?

A. Yes, sir.

Q. Now, after you reached the Admiral Restaurant, will you tell the court and jury what took place there?

A. There it was arranged to give me a check for my participation in the marriage with Zygmunt Romankiewicz.

Q. Was a check given to you at that time and place?

A. Yes, it was.

Q. Who gave you that check?

A. Marcel Lutwak.

Q. That is the defendant Marcel Lutwak you see in 758 the court room?

A. Yes, sir.

Q. Who else was present?

A. There were no others.

Q. Besides Zygmunt Romankiewicz, he too was present?

A. Zygmunt Romankiewicz and Marcel and myself.

Q. Was the defendant Zygmunt Romankiewicz present at the time the check was given to you by the defendant Marcel Lutwak?

A. Yes, sir.

Q. Do you recall who signed the check?

A. Marcel Lutwak.

Q. Do you recall on what bank?

A. The First National Bank of Chicago.

Q. Do you recall the amount of the check?

A. One thousand dollars.

Q. Thereafter what did you do with the check?

A. I cashed it.

Q. Did you cash it on or about the same date?

A. About the same date.

Q. For what purpose was the check for one thousand dollars given to you?

By Mr. Eben: Objected to. It calls for a conclusion.

759 By the Court: What if anything was said about the check?

By the Witness: Well, it was understood—

By the Court: What was said?

By Mr. Eben: That is objected to.

By Mr. Gerber: Objected to.

By the Court: Tell us what was said.

By the Witness: He said it was for my participating in the marriage.

By Mr. Downing:

Q. By whom was that said?

A. I don't recall.

Q. Was it said at this particular time?

A. It was not said at that particular time.

By Mr. Eben: Now may I ask that that be stricken?

By Mr. Gerber: I object, and ask that it be stricken.

It was not said at that time, she said.

By the Court: Let us find out when it was said.

By Mr. Owen: She didn't recall who said it, if the Court please.

760 By the Court: Overruled. Find out when it was said.

By Mr. Downing:

Q. When was this said, to the best you recall?

A. While I was in Paris, Mrs. Treitler said that she would see—

By Mr. Gerber: I object to this, if your Honor please, unless he fixes a time and place of the conversation and who was present so we can make a proper objection to it.

By the Court: Find out the time and place.

By Mr. Downing:

Q. When did you have this conversation with Regina Treitler?

A. It was while I was in Paris.

Q. Sometime while you were yet in Paris?

A. During the ten-day period while I was in Paris.

Q. All right, anybody else present?

A. I don't recall.

Q. Tell us what was said at that time and place.

By Mr. Eben: I object to that, your Honor.

By the Court: Overruled.

761 By Mr. Gerber: Object on behalf of Munio Knoll.

By the Court: Overruled.

By the Witness:

A. She said, "I will see you get one thousand dollars."

By Mr. Downing:

Q. Now, did you have a conversation about this same matter with the defendant Marcel Lutwak on the way from the air port to the Bellaire Hotel?

A. Yes, I did.

762 Q. Can you relate in substance what that conversation was? What did Marcel say and what did you say?

By Mr. Gerber: I object on behalf of Munio Knoll, outside of his presence.

By the Court: Overruled.

By Mr. Weissbourd: Same objection for Leopold Knoll.

By the Court: Overruled.

By the Witness:

A. I told him what Mrs. Treitler had said in Paris, and he agreed to see that I was given one thousand dollars.

By Mr. Downing:

Q. And thereafter you did receive this check about which you have previously testified, is that right?

A. Yes, I did.

Q. Since November 3, 1947, have you ever lived as man and wife with the defendant Zygmunt Romankiewicz?

A. No.

Q. Did you ever reside with Zygmunt Romankiewicz as man and wife at 35 South Central Park in Chicago, Illinois?

A. No.

763 Q. Have you filed any action to sever the effects of the marriage ceremony you participated in in Paris?

A. Yes.

Q. Approximately when?

A. It was filed May 3, 1950.

Q. Has there been any final ruling in connection with that matter as of this date?

A. No.

Q. Since the meeting in November at the time the check was paid to you have you had occasion to talk to the defendant Zygmunt Romankiewicz, since that time?

A. Yes, I did.

Q. Approximately when did you first talk to him after that particular meeting, as best you recall?

A. It was about six months after the marriage, and—

Q. Where did you talk to him?

A. I talk to him at the office of Joseph Honoroff:

Q. Is he an attorney at law?

A. He is an attorney.

Q. Who else was present at the time you talked with the defendant Zygmunt Romankiewicz?

A. Joseph Honoroff was present.

Q. Will you tell us in substance what was said
764 either by the defendant Zygmunt Romankiewicz, Joseph Honoroff or yourself?

By Mr. Eben: Objection on behalf of Leopold Knoll.

By the Court: I suspect it will be admissible only against Zygmunt Romankiewicz. It will be received as against Zygmunt Romankiewicz. If afterwards you think it is admissible against the others, you so indicate, and I will rule.

By Mr. Downing: Yes.

By Mr. Downing:

Q. Will you tell tell court and jury what was said at that particular time and place?

A. I asked when action would be taken for divorce, and Zygmunt asked me if I would wait two years because he wanted to become an American citizen, and it would take that long, and I agreed to wait.

By Mr. Downing: If your Honor please, I move that should be admissible against the whole—all four defendants. I think it is in furtherance of the conspiracy.

By the Court: Well, I think it is, too. It may be received as against all of the defendants.

By Mr. Downing:

Q. Thereafter did you have occasion again to talk to the defendant Zygmunt Romankiewicz?

A. I talked to him about the middle of November of 1950.

Q. That is the past year, 1950, is that right?

A. Yes.

Q. Where did you talk to him then?

A. We had lunch at the Stevens Hotel, Chicago.

Q. Was anyone else present at that time and place?

A. No.

Q. Will you relate the substance of the conversation if any that you had about this same matter at that time and place?

By Mr. Sokol: I object also. I believe this was after the indictment.

By the Court: I suspect this is admissible only against Zygmunt Romankiewicz and it will be received against him, unless afterwards it is recited you think it is admissible against all, then you make a motion and I will rule on it.

By Mr. Downing:

766 Q. Will you relate in substance what was said at that particular time and place?

A. I asked him not to oppose my action for divorce, and he said he would like me to wait until after this trial.

Q. And was there any further discussion about it at that particular time and place?

A. No, there was not.

By Mr. Downing: If your Honor please—

By the Court: That is admissible against Zygmunt. It will be received against Zygmunt and against none of the others. You are not to consider it against any of the other defendants.

By Mr. Downing:

Q. Since November 3, 1947, have you ever used the name of Romankiewicz or Knoll?

A. No.

Q. Since November 3, 1947, was the marriage between you and defendant Zygmunt Romankiewicz ever consummated?

A. No.

Q. Since November 3, 1947, has the defendant Zygmunt Romankiewicz ever paid or provided for your support?

767 A. No.

Q. Since November 3, 1947, have you ever at any time lived as man and wife with the defendant Zygmunt Romankiewicz?

A. No.

By Mr. Downing: That is all. They may cross examine.

By Mr. Gerber: At the conclusion of it I again move to strike all this testimony, for the previous reasons given, incompetency—

By the Court: Denied.

By Mr. Gerber: Without waiving any of my rights under the objection, and without prejudice to it, I would like to cross examine, your Honor.

Cross Examination.

By Mr. Gerber.

Q. You have given the name of Bess Osborne when you took the stand, is that correct?

A. Yes.

Q. Isn't your name Bess Romankiewicz?

A. Well, according to our understanding—

Q. Isn't your name—

768 A. I wasn't to use that name.

Q. Isn't that your name now?

A. No, it is not.

Q. You don't consider it so?

A. I do not consider it as my name.

By Mr. Gerber: Mark this Munio Knoll's Exhibit A for identification.

(Document so marked for identification.)

By Mr. Gerber:

Q. I show you what has been marked Exhibit A for identification of Munio Knoll, and ask you if you know what that is?

A. Yes, I do.

A. It is a marriage certificate.

Q. And whose marriage does that certify to?

A. It is a marriage between Zygmunt Romankiewicz and myself.

Q. On what date does it certify that marriage took place?

By Mr. Downing: Let the record show—

By Mr. Gerber: Withdraw that question.

By Mr. Downing: The exhibit is in French.

769 By Mr. Gerber:

Q. Was this the marriage certificate which was issued to you and Mr. Romankiewicz in Paris?

A. Yes.

Q. At the time you got married?

A. Yes.

Q. And was this a certificate under which you were married and was issued to you at the time?

A. Yes.

Q. And you celebrated this marriage with a ceremony, did you?

A. There was a marriage ceremony at the City Hall.

Q. Right.

By Mr. Gerber: Your Honor, I offer the certificate now.

By the Court: It may be received.

(Said document was received in evidence by the Court, and marked Defendant Munio Knoll's Exhibit A.)

By Mr. Gerber:

Q. I shew you what has been marked as Government's Exhibit 2 for identification, which you already identified, and ask you to look at it.

770 In connection with that particular exhibit—is that not the application for admission into this country of Zygmunt Romankiewicz?

A. Yes.

Q. You saw that for the first time when the two of you arrived at New York by plane, is that correct?

A. Yes.

Q. And that was in the office of the Immigration office at the air port, was it?

A. Yes.

Q. And they interrogated you for quite some time when you arrived, did they not?

A. I do not recall how long it was. It might have been from a half an hour to an hour.

Q. And you were the one they talked to, because he was illiterate, is that right?

A. They talked to him as well as me.

Q. Who talked to him?

A. I don't know what his title is, the man who made up these papers.

Q. Zygmunt was illiterate, wasn't he?

By Mr. Downing: Objection to the classification as illiterate.

By Mr. Gerber:

Q. Zygmunt couldn't read or write or understand 771 English, could he, at the time, Miss Osborne—Mrs. Romankiewicz?

A. This man could speak German.

Q. The man at the Immigration office?

A. Yes.

Q. Is that the man who signed that?

A. I can't tell you.

Q. At the end of your interview with the Immigration official Zygmunt was called over and asked to sign that, is that correct?

A. Yes.

Q. What was it, a room there?

A. It was.

Q. And when he was interrogating you you were at his desk, is that right?

A. Yes.

Q. And Zygmunt was sitting on the other side of the room, isn't that right?

A. He might have been.

Q. Yes. And when he got through, the Immigration officer got through interrogating you, was he filling out that form at the time or was it already filled out?

A. This form was already filled out, I believe. 772 He probably got some of this information from Zygmunt, because I couldn't have given it because I didn't know where Zygmunt was born, or when.

Q. But the Immigration Officer filled that out in his handwriting, isn't that correct?

A. Yes.

Q. And after he had talked to you for a while Zygmunt was called over and got this information, and you were there at the time, I believe.

A. I was.

Q. He got the information that was written in in red ink from him, is that correct?

A. Yes.

Q. And he asked Zygmunt to sign it?

A. He asked him to sign it.

Q. As a matter of fact, Miss Osborne, the Immigration Officer did not take the time to read that entire thing to Zygmunt, did he, with the printed matter and all?

A. I don't know whether he did or not. I can't recall.

Q. You can't recall that?

A. Whether he did read it.

Q. You wouldn't say one way or the other, is that
773 right?

A. Well, I don't remember.

Q. You have stated, Mrs. Romankiewicz, that you never lived with Zygmunt at any time after the marriage ceremony was performed.

A. No, I did not.

Q. Have you ever told anyone else that you lived with him as man and wife?

A. I have never told anybody that I have.

Q. Have you ever made a statement under oath to that effect?

A. That I have lived with him?

Q. After you married him, yes.

A. No, I do not recall that I have.

Q. Well, have you or haven't you?

A. I do not recall that I have.

Q. You understand the meaning of an oath, do you not?

By Mr. Downing: I object.

By the Court: There is no occasion for that, Counsel. Now you proceed with your cross examination. No occasion for that remark.

By Mr. Downing: I ask it be stricken.

774 By the Court: Strike it out.

By Mr. Gerber:

Q. You have stated on direct examination you filed a bill for divorce, is that correct?

A. I have.

By Mr. Gerber: Mark this Defendant Munio Knoll Exhibit B for identification.

(Document so marked for identification.)

By Mr. Downing: May I see it first, before you show it to her?

By Mr. Gerber: Yes.

By Mr. Gerber:

Q. I show you now Defendant Zygmunt Romankiewicz Exhibit marked B for identification, and ask you to look at it.

A. I have never seen this before. I have signed my name. I just didn't read it. If I had, I wouldn't have signed it.

Q. Your lawyer prepared this?

A. All I saw was this last sheet.

Q. Do you know what it is, from looking at it?

A. Yes, I do.

Q. What is it?

775 A. It is a bill for divorce.

Q. Prepared by your lawyer?

A. Yes.

Q. I direct your attention to page 2 of the exhibit and ask you whether that is your signature?

A. That is my signature.

Q. I direct your attention to page 3 of the exhibit and ask you whether that is your signature?

A. Yes, it is.

Q. Were you sworn by a notary public at the time you signed it?

A. No, was not.

Q. Is there a notary's seal on it?

A. There is a notary's seal on it.

Q. Does it say you were sworn at the time you signed your name?

A. All I did was sign it.

Q. Will you please answer the question?

By Mr. Downing: I object. She answered that question.

By the Court: Sustained.

By Mr. Downing: I ask that be stricken.

By the Court: Strike it out. She answered it.

776 By Mr. Gerber:

Q. Did you sign it?

A. I did sign it.

Q. And it states you swore to it?

A. Yes.

By Mr. Downing: I object, repetition.

By the Court: It speaks for itself.

By Mr. Gerber:

Q. It states there further that you read it before you signed it?

By Mr. Downing: I object. It speaks for itself.

By Mr. Gerber: I am asking another question.

By the Court: Well, it speaks for itself. It is a written document.

By Mr. Gerber: I ask leave to offer this in evidence, your Honor.

By the Court: Yes, it may go in evidence.

By Mr. Gerber: And I ask leave to read it to the jury.

By the Court: You can read it. Conclude your cross examination and then you can read it.

734. (Said document was received in evidence by the Court, and marked Defendant Munio Knoll Exhibit B.)

By Mr. Sokol: I was going to ask for a recess, if we might have a few minutes.

By the Court: How much longer will your cross examination take?

By Mr. Gerber: Possibly ten or fifteen minutes.

By the Court: Take a short recess, Ladies and Gentlemen.

You may step down, Madam, if you like.

(Recess taken.)

By Mr. Gerber:

Q. Mrs. Romankiewicz, is it not a fact that in Paris prior to your marriage to Zygmunt that you and Zygmunt had a conversation in which he asked you whether you meant this marriage and whether you two couldn't live together and wouldn't live together if the marriage was had, and isn't it a fact that you answered, "Yes," when he asked you that?

A. I do not recall any such conversation.

Q. Would you say that it didn't occur?

A. I would say that it did not occur.

778. By Mr. Gerber: That is all of this witness, your Honor.

By the Court: Very well.

By Mr. Eben: I have a rather brief cross examination.

By Mr. Gerber: I want to reserve my right to read this exhibit when we are through.

By the Court: Very well.

379

Cross Examination by Mr. Eben.

Q. Mrs. Romankiewicz—do I pronounce it correctly?

A. I don't know.

Q. You were present at the marriage between my client, Mr. Leopold Knoll, and the then Grace Klemtner, were you not?

A. Yes.

Q. That took place in Paris, did it not?

A. Yes.

Q. Do you recall the approximate date?

A. November 6, 1947.

Q. Prior to that time you had met Leopold Knoll in Paris, had you not?

A. Yes, I had.

Q. And Grace Klemtner was also there, was she not?

A. She was there in Paris.

Q. Prior to her marriage. A conversation took place, did it not, at the le Khedive Hotel in Paris between Leopold Knoll and Grace Klemtner at which you were present, isn't that right?

A. There were several conversations.

Q. At one of those conversations, did not Grace
780 Klemtner say to Leopold Knoll, in your presence, that she did not know whether she was going to go ahead with this marriage, or not?

A. Yes.

Q. And at that time didn't Leopold Knoll say to her, "If you do not intend to marry me and stay married to me, and if you have only come over here to marry me for the purposes of getting me into the United States, and if it is for that purpose only, then you go back home, I do not want to marry you?"

A. I believe that did take place.

Q. All right. Leopold Knoll said that to Grace, didn't he?

A. Yes.

Q. Now, then, Grace left the room in which that conversation took place?

A. I do not recall.

Q. Do you recall Grace saying at that time that she wanted to think it over?

A. I do not recall that, either.

Q. Excuse me.

A. I don't recall whether she did say that.

Q. After Mr. Leopold Knoll made that statement, that he would not marry Grace if she was there only for the purpose of getting him into the United States and that he would only marry her if she intended to live with him permanently as husband and wife, did Grace then say that she would marry him?

A. I don't know whether it was at that time she did, but she did say she would marry him.

Q. When did you first tell the story that you have told here this morning to the Immigration and Naturalization Service?

A. The exact date, is that what you want?

Q. Approximately?

A. I don't know the exact date, but I believe it was in November of 1949.

Q. Did they ask you to come over to their office or did they visit you where you worked or where you resided?

A. They came to my office.

Q. And do you recall who they were in that particular instance?

A. Mr. Lawson and Mr. Plzak.

Q. Mr. Plzak?

A. Mr. Plzak.

Q. And Mr. Lawson, did you say?

A. Yes.

782 Q. When you say Mr. Lawson, were you indicating the gentleman who has been sitting back of Mr. Downing?

A. Yes, sir.

By Mr. Downing: We will stipulate to that.

By Mr. Eben:

Q. And at that time did they interrogate you relative to what had happened in connection with your marriage to Mr. Romankiewicz?

A. Yes.

Q. Did you thereafter testify before the grand jury?

A. Yes.

Q. On how many occasions?

A. Two.

Q. Did you testify before the same grand jury on each occasion?

By Mr. Downing: Objection, whether she knows it was the same or a different one. I think it is immaterial.

By the Court: She may answer if she knows.

By the Witness:

A. I do not know if it was the same grand jury, but it was at different dates.

By Mr. Eben:

Q. Now, when Mr. Lawson first talked with you, 783 you did not tell him exactly the same story that you told here this morning, did you?

A. Well, I believe I told more details then.

Q. Of everything that you have testified to here this morning?

A. Not the first time. At the grand jury, yes, I did.

Q. At the grand jury?

A. Yes, exactly the same.

Q. But the first time that that he saw you, you did not tell him the same story as you have told it here this morning?

A. No.

Q. As a matter of fact, at that time you refused to tell them anything, isn't that true?

A. No, that is not true.

Q. You did not tell them at that time, did you, about the one thousand dollars?

A. I told them at that time that I received a gift of money.

Q. A gift?

A. Yes.

Q. In order to summarize this and not make it too 784 lengthy, you were told by some representative of the Government, either Mr. Lawson or Mr. Plzak, or somebody else, that if you didn't testify before the grand jury, that you would be indicted, isn't that true?

A. No, sir.

Q. Were any threats made to you at any time?

A. Never.

Q. Were you ever indicted?

A. Not to my knowledge.

Q. Did anyone connected with the Government ever tell you that if you did testify on behalf of the Government, that they would grant you immunity?

A. No, sir.

Q. Did anyone ever say anything like that?

A. No, they did not—it was my—

Q. What was that?

A. It was my own desire to tell the truth.

Q. After the Government came to see you, isn't that true?

A. I had told Mr. Honoroff before the Government officials ever came to see me, that I wanted to go to see them. I didn't know they were seeking me, and I told Mr. Honoroff I wanted to see them and tell them the truth, and Mr. Honoroff told me he would make an appointment for me, and on that same day on which he told me he had the appointment for me, the Immigration officials came to my office.

Q. Well, you knew at that time, when Mr. Honoroff—is it?

A. Yes.

Q. —talked with you, that the Government was conducting an examination?

A. Yes, I did.

Q. And it was only after you knew that the Government had been conducting an investigation that you expressed a desire to tell your story?

A. That is right.

Q. Prior to that time you had no such desire, did you?

A. No, sir.

By Mr. Eben: That is all.

By Mr. Sokol: I have a few questions.

Cross Examination by Mr. Sokol.

Q. Mrs. Remankiewicz, with respect to your trip over on the plane, you recall, do you not, discussing with some emotion with Mrs. Treitler, the unhappiness you had experienced in your first marriage?

786 A. I may have. I don't recall it.

Q. Do you recall that during that discussion, in which you mentioned this first marriage had been unhappy, that Mrs. Treitler told you that she hoped you would be happy with Zygmunt, her brother?

A. No, I don't recall that, because the understanding I had was that I was to marry Zygmunt only to bring about a re-union with he and his former wife.

Mr. Sokol: That is all.

By Mr. Downing: Any more cross-examination?

Redirect Examination by Mr. Downing.

Q. As a matter of fact, the understanding, was it not, Miss Osborne, the purpose of Zygmunt was further to bring him into the United States, is that right?

A. Yes. At the time it was arranged for me to marry Leopold, then it was said it might be a true marriage, and there might be romance involved. But not in the marriage with Zygmunt Romankiewicz.

Q. As a matter of fact, you originally were first requested to go over and marry Leopold, isn't that right?

A. Yes.

By Mr. Eben: I object to that question.

787 By the Court: Overruled.

By Mr. Downing:

Q. Mr. Eben asked you how you pronounced the name of Romankiewicz, or Romankiewicz. You don't actually know, because you have never used that name, is that right?

By Mr. Gerber: I object.

By the Court: Overruled.

By the Witness:

A. I haven't used that name, no, sir.

By Mr. Downing:

Q. That is correct. In connection with this marriage certificate, counsel has shown you here, which has been admitted in evidence as defendant Munio Knoll's Exhibit A in evidence, I ask you to look at that and ask you if on that document there is not mention of the fact that you were divorced from William Osborne—

A. Yes.

Q. I ask you in connection with that, is there any mention about the fact that Zygmunt Romankiewicz has been married or divorced?

By Mr. Owen: The document speaks for itself, if the Court please.

788 By the Court: Sustained. What is it, in English?

By Mr. Downing: No, it is in French.

By the Court: Does she read French?

By Mr. Downing:

Q. Do you read French?

A. I can read a little.

By the Court: Sustained.

By Mr. Downing: I submit, your Honor, in view of this, I don't see the relevancy of this document. It is in French. There has not been any interpretation offered.

By the Court: It won't do any harm.

By Mr. Gerber: It is admitted as proof of marriage, your Honor.

By the Court: No, I did not admit it for that purpose.

By Mr. Downing: Just as an exhibit.

By Mr. Gerber: That was my purpose in asking it be admitted, your Honor, was to evidence the marriage she testified about.

By Mr. Downing:

Q. Now, in connection with Defendant Munio Knoll Exhibit B, which was shown to you by Mr. Gerber, by whom was that prepared, if you know?

789 A. That was prepared by my lawyer, Mr. Jacobson.

Q. You didn't have anything to do with the preparation of it, is that right?

A. No; I did not.

Q. As a matter of fact, will you tell the Court and jury the circumstances under which you affixed your signature to this document? Tell us what took place at that time.

A. My lawyer called me and asked me to come over and sign some papers, and I did. His secretary handed me the papers that needed the signature. She handed it to me through a window, and I just signed it. I trusted my lawyer knew what he was doing.

Q. Had you ever told your lawyer you at any time cohabited with Zygmunt Romankiewicz?

A. No.

By Mr. Gerber: I object. The instrument speaks for itself.

By the Court: That isn't what he asked. He asked what she told her lawyer.

Overruled.

By Mr. Downing:

Q. Did you ever tell your lawyer—

A. No, he knew otherwise.

790 By Mr. Gerber: I object and ask it be stricken.

By the Court: Overruled.

By the Witness: He knew I had never lived with him.

By Mr. Downing:

Q. You had explained to your lawyer the entire circumstances and asked him to obtain a divorce for you, isn't that right?

A. Yes.

Recross Examination by Mr. Gerber.

Q. Your lawyer's name was Mr. Jacobson?

A. Yes.

Q. Which Jacobson was that?

A. Ralph.

Q. Located at 77 West Washington street, Chicago, is that correct?

A. Yes, sir.

Q. Didn't you have a discussion with him about the divorce grounds you claimed for divorce and about the case and about your marriage before he prepared this document?

A. I didn't talk to him about grounds. He knew 791 the case.

Q. Did you discuss with him then or at any other time the divorce and the grounds that you were going to claim for your divorce?

A. I never discussed the grounds with him.

Q. Did he ask you for certain facts upon which he could draw a divorce bill?

A. Yes, he asked me about the marriage.

Q. That is right, and you don't want us to believe that the lawyer drew this divorce bill and put in facts that you didn't tell him about, do you?

A. I don't know what facts are in there that he wouldn't know about or—

Q. All right.

A. He wouldn't assume. He, however, put facts into that document which I did not tell him to put in.

Q. I know you did not tell him to put it in, but you discussed those facts with him?

A. I discussed with him only the fact that I had never lived with Mr. Romankiewicz.

Q. Did he not tell you in your discussion about the divorce, that he would draw a bill for divorce and in that bill he would set forth the things you discussed?

792 A. No, he did not.

By Mr. Downing: I think, your Honor, this is going—

By Mr. Gerber: That is all.

Recross Examination by Mr. Eben.

Q. In response to a question that Mr. Downing put to you on redirect examination, did you say that your marriage

to Leopold would have been a true marriage, with romance?

A. That it could have been.

Q. That is all. By that you mean, had you married him?

A. Yes.

By Mr. Eben: That is all.

By Mr. Downing: That is all. You may step down.

(Witness excused.)

793 By Mr. Gerber: May I now proceed, your Honor?
Ladies and Gentlemen of the Jury, by the court's
permission I am now reading from Munio Knoll, alias
Zygmunt Romankiewicz, Exhibit B for identification, in the
record now:

796 By Mr. Downing: In order to expedite this matter,
I have a translation of this document which was ad-
mitted as Defendant Munio Knoll's Exhibit A.

797 By Mr. Downing: For the Court's information, this
translation is certified to be true and correct, by an em-
ployee of the Immigration and Naturalization Department.
The document itself is all in French.

By the Court: Any objection to the translation?

By Mr. Gerber: For what purpose, if your Honor please?

By the Court: So that the jury will know what it is.

By Mr. Gerber: Oh, no. I would like to look at it, if the
Court please. No objection.

By the Court: I understand there is no objection to the
translation being received in evidence.

By Mr. Gerber: That is right, and attached to the ex-
hibit.

By Mr. Downing: Will you attach it to the exhibit?

Mr. Gerber: I will attach it to the exhibit.

By Mr. Downing: If your Honor please, at this time
the Government would like to advise the Court there is a
witness, Grace Klemmtner, who is available to the Court.
The Government does not desire to place the witness on the
stand as their witness. I believe she has facts concerning
this entire matter.

798 By Mr. Eben: I think that such a statement should
be made out of the presence of the jury. I think it is
very improper for the District Attorney to make it.

By the Court: Step into the jury room, ladies and gentle-
men.

By Mr. Eben: It is almost grounds for a mistrial.

By the Court: Counsel, if you are making a motion,
make it so I can hear it.

By Mr. Eben: Excuse me. I did not make any motion.

By the Court: What?

By Mr. Eben: I say, I did not make any motion.

(The following proceedings were had out of the presence and hearing of the jury:

By the Court: What is it, now?

By Mr. Downing: If your Honor please, a person by the name of Grace Klemtner, alias Grace Klemtner Knoll, who it is alleged went through a marriage ceremony with the defendant Leopold Knoll, is available and is in the hall, and is a person who could be considered as a witness. The Government, however, will not vouch for her truthfulness and veracity. The Government does not desire to put her on the stand as a witness. The Government has, however, brought her from Los Angeles, and is now making a motion and asking the Court to call her as a court witness, with the right to cross examine on the part of the Government, and, of course, the defendant.

By the Court: Any objection?

By Mr. Eben: Certainly, oh, certainly.

By the Court: What is the objection?

By Mr. Eben: He has stated no valid grounds for calling the witness as a Court witness. The only possible ground that he could use her for calling her as a court witness is he was taken by surprise because of her direct testimony. He has stated no proper facts to permit the Court to call her for cross examination, so I say let him put her on and vouch for her credibility. He took her before the grand jury, and handled her there to the extent that your Honor had to discharge her months ago.

By the Court: No, I did not have to. The law required it.

By Mr. Eben: That is precisely what I mean.

By the Court: Well, you would have been more courteous to have put it that way.

By Mr. Sokol: I am sure Mr. Eben meant no discourtesy.

By Mr. Eben: I meant no discourtesy. The law is your Honor's master as much as it is ours, and I understand your Honor follows it.

By Mr. Downing: I might state one ground, as far as the Government is concerned, that we won't vouch for the truthfulness and veracity of this witness.

By Mr. Eben: Then they should not put her on.

By Mr. Sokol: Then they have no grounds for calling her.

By the Court: I think that society ought to hear what she has to say about it. She was a defendant in this lawsuit, and I thought that her constitutional rights had been invaded, and I discharged her, and I think rightfully. Still, the evidence discloses she was a witness to certain things in which the Court is concerned. I think the Court should call her as a Court witness, and that will be done, and each side may cross examine her. Bring in the jury.

By Mr. Eben: We have a further objection, your Honor.

By the Court: What is the further objection?

By Mr. Eben: Because she is not competent.

By the Court: Because of what?

801 By Mr. Eben: Because she is the wife, and still is the wife—

By the Court: We will pass that question. I think this marriage was a mockery. The evidence all indicates it. The jury can pass on it, and maybe they will say it is a valid marriage.

By Mr. Sokol: If the Court please, by the Government's own witness, who just left the stand—

By the Court: Oh, yes. We are not going into this question again. You are objecting because she is the wife of Leopold. I think the evidence indicates that the ceremony was a mockery. It was never intended to be anything else. Now the jury may decide otherwise.

By Mr. Eben: Well, I do point out, your Honor, under the authority of the Supreme Court, you should not pass to the jury as a question of fact something which you should decide because this witness is prima facie incompetent under the authority of the Miles case.

By the Court: I say she is not, under the state of the record. Bring in the jury.

By Mr. Eben: One other thing. I want to perfect my record. I want the record to show that I object to
802 her competency to testify against Leopold Knoll because she is his wife, and I want the record to show that I ask for voir dire examination.

By the Court: You may have the privilege of asking her anything.

By Mr. Eben: I do not think we ought to have the voir dire examination in the presence of the jury, if that is what your Honor means.

By the Court: No, it is not what I mean. All the evidence before us has indicated that she went through a mockery, made a mockery out of, a marriage ceremony. Now, it may not be true, and she may convince the jury otherwise.

By Mr. Eben: I would like, also, to register my objection to the Court calling her as a Court witness.

By the Court: Overruled.

By Mr. Sokol: Similar objection for Regina Treitler.

By the Court: Overruled.

By Mr. Gerber: We object to the Court calling her as a Court witness.

By the Court: Overruled.

By Mr. Eben: I would like also to state that she is now under subpoena issued by the Government.

By the Court: All right. Bring in the jury.

(The following proceedings were had in the presence and hearing of the jury:)

By Mr. Downing: Grace Klemtner.

By Mr. Eben: I suggest that she be referred to as Mrs. Knoll during the course of the examination. I think counsel should not try to plant some sort of inference with the jury regarding her name. She is the wife of Leopold Knoll.

By the Court: Have the young lady come in.

MRS. LEOPOLD KNOLL, called as a witness by the Court, having been first duly sworn, testified as follows:

By the Court:

Q. What is your name?

A. Mrs. Leopold Knoll.

Q. What is your first name?

A. Grace.

Q. Where do you reside?

A. At 116½ South Bonnie Brae, Los Angeles.

By the Court: How long have you resided there?

By the Witness: About three years.

By the Court: The Government may cross-examine.

804 *Cross Examination by Mr. Downing.*

Q. Have you ever been in the military service of the United States?

A. Yes, sir, I have. I served in the Army.

Q. Approximately from what date until what date?

A. October 16, 1943, until December, 1945.

Q. Did you receive an honorable discharge?

A. Yes, sir.

Q. After you were discharged from the Army, did you go to work for Sears, Roebuck & Company, ultimately?

A. Yes, I did.

Q. Approximately from what date until what date did you work there?

A. Oh, about a year and a half.

Q. What was the last date, approximately, that you worked at Sears, Roebuck?

A. I think it was October, 1947.

Q. As a matter of fact, it was about October 29, 1947, is that right, ma'am?

A. Just about.

Q. And, as a matter of fact, you took a leave of absence from Sears, Roebuck at that time, is that right?

A. Yes, I did.

805 Q. When did you send in your resignation, if ever?

A. When I arrived in Los Angeles, and I decided to remain there.

Q. That was about December 13th or 14th, 1947, is that right?

A. Yes.

Q. Now, you were making what, about \$50 a week, with Sears Roebuck?

A. Probably a little more.

Q. While you were working for Sears, Roebuck & Company, where were you living?

A. With my mother.

Q. What was your name at that time?

A. Grace Klemtner.

Q. That is your maiden name?

A. Yes.

Q. You have never had any other name besides Grace Klemtner?

A. No.

Q. Now, after you left Sears, Roebuck & Company about October 29, 1947, you went to Paris, France, is that right?

A. I did.

Q. You left on November 1, 1947, is that right, 806 madam?

A. It was approximately that time.

Q. It was on Saturday, wasn't it?

A. I don't remember.

Q. Well, it was late in the afternoon that you left, and Jane Turner was with you when you left, is that right?

A. Yes.

Q. She was out at the Chicago Municipal Airport in Chicago?

A. Yes.

Q. For what purpose did you take the trip to Paris?

A. Purely for vacation and rest.

Q. Did you make out a passport application?

A. Yes, I did.

Q. When did you make out this passport application?

A. I don't remember the date.

Q. Well, was it three months, three weeks or three days before you left?

A. It was probably a matter of a few weeks before I left.

Q. A matter of a few weeks before you left?

A. I am not certain.

Q. Where did you make out your passport application?

A. At the office here in Chicago.

Q. You thereafter obtained a passport, is that right?

A. Yes, I did.

Q. Now, you, of course, know these four defendants who are in this proceeding, is that right?

A. Yes, I did.

Q. And, of course, you can identify them in the courtroom?

A. Yes.

Q. When did you first meet Regina Treitler?

A. I have known Mrs. Treitler for many years.

Q. Well, approximately when was it you first met her?

808 A. It was before I went into the army.

Q. Sometime before 1943, is that right?

A. That is right.

Q. Now coming on up into 1947, were you seeing Mrs. Treitler frequently then?

A. No. Mrs. Treitler and I saw each other only at club meetings.

Q. What club was that?

A. The Pioneer Womens Organization.

Q. Now, how frequently would you say you saw Mrs. Treitler during the year 1947?

A. Perhaps three or four times a year.

Q. Prior to the time you went to Paris, when was the last time you saw her?

A. About a few weeks before she left.

Q. Did you know that she went to Paris about October 25th, is that right?

A. I know that Mrs. Treitler went on a trip to Europe.

Q. You know she did go?

A. Yes.

Q. You had a conversation with her about the fact that she was going, is that right?

A. Yes.

809 Q. And that conversation took place about a week or two before she left, is that right?

A. Maybe a little longer, a matter of weeks. I don't remember.

Q. It would not be much over a month or a month and a half?

A. No.

Q. Sometimes within a month or a month and a half before she left, is that right?

A. Yes.

Q. Did you have any conversation with Mrs. Treitler about the fact that you were going to Paris?

A. Yes, I did.

Q. Tell the court and jury what you told Mrs. Treitler and what she told you at that time.

A. Well, we both talked about going, and she said that she would make hotel reservations for me. That was all.

Q. You did not have hotel reservations before you left?

A. Yes, I did. I made one on my own accord.

Q. On your own?

A. Yes.

Q. Did Mrs. Treitler make a hotel reservation?

810 A. You mean for herself?

Q. For you?

A. She had a room for me when I got there.

Q. Did you tell Mrs. Treitler when you were coming to Paris?

A. I don't recall.

Q. Well, you met Mrs. Treitler in Paris, is that right?

A. I told her I was going.

Q. In fact, Mrs. Treitler was at the airport when you landed, is that right?

A. Yes, we met there.

Q. And Leopold Knoll was at the airport?

A. Yes.

Q. Anyone else present at that time?

A. No.

Q. How did Mrs. Treitler know that you were coming at that particular time and place?

A. I must have told her.

Q. So that you had told her in some way or other before she left, is that right?

A. I really do not recall.

Q. You don't recall how you informed Mrs. Treitler that you were leaving on November 1st and arriving at such and such a time in Paris, is that right?

A. I probably told her. I don't remember.

Q. Before she left, is that right?

A. Yes.

Q. Now, while you were talking to Mrs. Treitler before she went to Paris, did she tell you about having any relatives in Paris?

A. She said she had a family in Europe.

Q. What did she tell you about the family?

A. She told me she had lost a sister during the war.

Q. Is that all she told you?

A. That is all.

Q. She didn't tell you about having any brothers in Europe?

A. She may have mentioned brothers or cousins.

Q. You do not now recall, is that right?

A. I don't recall any specific conversation regarding her family.

Q. Did she suggest to you that you come to Paris to meet some of her brothers, or one of her brothers?

A. No.

By Mr. Then: Objected to as a suggestion. State what the conversation was.

812 By the Court: He is cross examining.

By Mr. Downing: It is cross examination.

By the Court: Overruled.

By Mr. Gerber: On behalf of Munio Knoll, I object to this:

By the Court: Overruled.

By Mr. Gerber: Conclusions are no more admissible on cross examination than on direct, your Honor.

By the Court: That is true, but the objection is overruled.

By Mr. Downing: Read the question.

(Question read.)

By Mr. Downing:

Q. Mrs. Treitler knew that you were in the Army Corps, is that right?

A. She may have heard, because the women in that organization were very proud of it.

Q. As a matter of fact, you knew her before you went into the army, is that right?

A. Yes.

Q. Then you were gone how long in the army?

A. Two years.

Q. So that you were gone from this organization 813 that you and Mrs. Treitler belonged to, is that right?

A. Yes, while I was in the Service.

Q. Then you resumed your activities in this organization after you returned from the Military Service?

A. Yes, sir.

Q. Now, while you were talking to Mrs. Treitler about this matter, did Mrs. Treitler suggest to you that you bring your honorable discharge certificate from the United States Army?

A. No, sir, she did not.

Q. As a matter of fact, you took your honorable discharge certificate along with you, is that right?

A. Yes, I did.

Q. For what purpose did you take that along?

A. We were told time and time and again in the army to always carry our army discharge travelling in a foreign country or even in the United States.

Q. You had not obtained your army discharge until after you left the army?

A. Certainly.

Q. And they were telling you while you were in the army to take it with you when you did not have it?

A. No, the clerks in our organization were always telling us to take our discharge papers with us because 814 it was an excellent identification.

Q. Even though at that time you did not have it?

A. Yes, sir.

Q. That is the only reason you took your army discharge certificate along?

A. Yes, sir.

Q. You had your passport?

A. Yes, I had my passport.

Q. Did it have your picture in it?

A. Yes.

Q. It had your name and address in it?

A. Yes.

Q. So you needed additional identification, is that right?

A. Yes.

Q. Now, as a matter of fact, Miss Klemtner, isn't it true that Mrs. Treitler had you take your army honorable discharge certificate?

A. No, it is not true.

Q. You want this court and jury to believe Mrs. Treitler never discussed with you your honorable discharge certificate?

By Mr. Sokol: If the Court please, I do not think he should badger the witness. He has asked the same 815 question three times, and she has answered.

By the Court: No. I guess she has answered that.

By Mr. Downing:

Q. Did Mrs. Treitler ever pay you any money between the years 1947 through 1949?

A. She did not.

816 Q. Did she ever give you any gifts of any type?

A. I have a handkerchief from her.

Q. That is the only gift you ever received?

A. That is right.

Q. How many times did you see Regina Treitler after you were in Paris?

A. I don't know, sir. We met sometimes for lunch or shopping, but I cannot tell you how many times.

Q. You saw her quite frequently while both you and Mrs. Treitler were in Paris, is that right?

A. Not too frequently, no.

Q. When did you first meet Marcel Lutwak?

A. I think in 1946.

Q. In 1946?

A. Yes, sir.

Q. You are sure it was not in 1947?

A. No, I think it was 1946.

Q. Was it the last part of the year?

A. Probably.

Q. Where did you meet him?

A. He came to pick his aunt up one day at a meeting, and I was introduced to him.

Q. Then when did you next see Marcel Lutwak 817 after that?

A. Oh, several months passed and I bumped into him downtown one day.

Q. When was that?

A. I don't know, Mr. Downing.

Q. Well, will you say it was in 1947?

A. It may have been the early part of the year.

Q. Did you know that Marcel Lutwak went to Paris?

A. No, I did not.

Q. When did you first hear about the fact that he went to Paris?

A. The Immigration authorities in California told me that.

Q. That was the first time you ever heard it?

A. Yes.

Q. Did Marcel Lutwak have anything to do with you going to Paris?

A. No, he did not.

Q. He had nothing to do with the preparation or plans of going?

A. No, sir.

Q. You never discussed with him the fact that you were going to Paris, is that right?

A. Yes, I told him that. I was going.

818 Q. When did you talk to Marcel about the fact that you were going?

A. After I had decided to go.

Q. Well, that was approximately how long before November 1, 1947?

A. A few weeks, perhaps.

Q. Tell us what you told Marcel and what Marcel told you about anything at that time and place.

A. I told Marcel that I was going. As I recall, he told me it was a nice city. I am not certain, but I think he said he once lived there, and told me it would be cold but not as cold as Chicago weather, and damp at that time of the year.

Q. Anything else you can recall?

A. Nothing pertinent, Mr. Downing.

Q. Did he ever tell you at that time that he had been to Paris recently?

A. No.

Q. Did he ever tell you that he had gone to Paris and had married and had returned?

A. No, sir.

Q. This was some time, you say, in the month of October before you left, 1947?

A. It was September or October.

819 Q. How did you happen to meet Marcel Lutwak at that time?

A. We met at a Pioneer meeting.

Q. That is this same organization that Regina Trietler belonged to?

A. Yes, sir.

Q. Was Regina Treitler present then, too?

A. I don't really know.

Q. You don't recall, is that right?

A. I recall that our group had met, the younger group, and Marcel was there.

Q. Now, is that the only conversation that you had with Marcel about this matter prior to the time you left?

A. Yes, it is.

Q. Then, thereafter, you never saw Marcel at any time before you left?

A. Marcel took me to the airport with Jane.

Q. Marcel took you to the airport?

A. Yes, he did.

Q. Is that the only thing he did in connection with your trip going to Paris?

A. He spoke to somebody at the airport and told them to take care of my luggage, nothing more.

820 Q. Other than those events, do you recall anything else he did in connection with your trip to Paris?

A. Nothing.

Q. That is all he had to do, either in making arrangements or plans for your going to Paris, is that right?

A. Yes, sir.

Q. I now show you Government's Exhibit 6, marked for identification, and ask you to look at that and ask you if you have seen the original of that before?

A. Yes, I have.

Q. I ask you if that is the original of the passport application that you made out—

By Mr. Eben: May I see it, please?

By Mr. Downing:

Q. —at the time you made the application for the passport to leave the United States?

A. I assume that it is.

Q. Well, is there any question in your mind as to whether the handwriting you see thereon is yours?

A. No.

Q. You know it is your handwriting, don't you?

A. Yes, it is.

Q. And the signatures on page 2 of the document 821 which you looked at are your signatures, is that right?

A. Yes, sir.

By Mr. Gerber: Your Honor, it is about time to recess. We might expedite matters by recessing now.

By the Court: No. What is this paper?

By Mr. Downing: I want to ask a couple more questions before we recess, please.

By the Court: Yes. Now, gentlemen, if you and the other counsel want to look at that paper, look over Mr. Bartoline's shoulders, so that we won't take up so much time.

By Mr. Downing:

Q. As a matter of fact, your signature here is actually your signature, is that right?

By Mr. Eben: Just a moment. There have some matters come up in connection with this I would like to discuss out of the presence of the jury, your Honor.

By the Court: Step into the jury room, ladies and gentlemen.

(The following proceedings were had out of the presence and hearing of the jury:)

822 By Mr. Downing: Your Honor, may we also have this discussion out of the presence of the witness?

By the Court: Step into my Chambers, madam. (Witness leaves court room.)

By Mr. Eben: It strikes me, your Honor, that first, this document is immaterial because he has already established she had a passport to go to Europe. He is now apparently, and by he I mean the Assistant District At-

torney, trying to lay the basis for some accusation against this witness, that she made fraudulent statements at the time she made her application for a passport. Now, there are any number of reasons why he ought not to be permitted to do that.

By the Court: Let me see it. Go ahead, what is your point?

By Mr. Eben: I say, first, he is going to ask her to admit that this is an application that she filled out. He will then attempt to show the statements contained therein are untrue, I point out to your Honor, when you do such a thing it is a violation of the law of the United States.

By the Court: I do not think there is anything in 823 the record to indicate that is what he is going to do.

By Mr. Eben: Yes. It states "Research", if your Honor will look. It states she went for the purpose of research. She ought to be permitted to know that she should not make statements that may incriminate her. I think you should tell this witness, in complete protection of her constitutional rights, that she should not answer any questions that may incriminate her.

By the Court: You do not need to worry about this witness' constitutional rights. I will take care of her 824 constitutional rights better than you ever have.

Bring in the jury.

(The following proceedings were had in the presence and hearing of the jury.)

By Mr. Eben: I would like the record to show the witness is not represented by counsel either.

By the Court: Well, she had counsel in this case.

By Mr. Eben: I beg your pardon?

By the Court: She had counsel in this case.

By Mr. Eben: Now, I ask for a mistrial.

By the Court: Overruled.

By Mr. Downing: Mr. Reporter, will you read the last question, please?

(Last question read.)

By Mr. Downing:

Q. By that, you refer to the place on the line, "Signature of Applicant"?

A. Yes.

Q. As a matter of fact, at the time you made that application, Marcel Lutwak accompanied you, didn't he? 825

A. Yes, he did.

Q. So he was in on that part of the arrangement?

A. Yes, he helped me with it.

Q. So your other answer has to be changed in accordance with the additional facts I have shown?

A. You never asked me that question before.

Q. Did Marcel have anything else to do with arranging your trip to Paris?

A. No.

Q. At the time you went to Paris, you were going to do research work, according to this application, is that right?

A. Research in the sense that I like to write, and I was interested in travelling.

Q. Well, that is the purpose of the trip you put down here on the application, isn't that right?

A. I am sorry. I put down research and travel.

Q. Do you see the word "travel" there?

A. No.

Q. Just the word "research"?

A. That is right.

Q. Tell the court and jury what type of research you were going to do.

826 By Mr. Eben: Objected to. That is my point.

By the Court: Overruled.

By Mr. Eben: I think your Honor ought to tell the jury what her constitutional privileges are.

By the Court: Overruled.

By the Witness:

A. I had been a copywriter, and I had been writing for many years, and this was my best subject in school, newspaper work and library were the things that interested me, and I had been interested in travel. That is one reason I joined the army. I wanted to see other parts of the country and learn people.

By Mr. Downing:

Q. Did you actually do any research work in Paris?

A. Yes, I did.

Q. Actually you had not done any writing while you were working for Sears Roebuck, had you?

A. I was employed as a writer. That is how I made my living.

Q. You were employed as a writer at Sears Roebuck?

A. Yes, sir.

827 Q. And you were getting what, fifty dollars a week?

A. Fifty-two fifty, I believe.

Q. Were you seeing Marcel frequently at the time that this application was made out?

A. Mr. Downing, what do you mean by frequently?

Q. Well, you know the word. You are a writer. You know what the word "frequently" means.

A. Every few weeks, perhaps three or four times every three or four weeks, once or twice a month.

Q. Did you ask Marcel, or did he tell you he would go down and have you make out this application for a passport?

A. I believe Marcel volunteered.

Q. Actually you had only known Marcel about a year at that time, is that right?

A. Yes.

Q. This document says he knew you four years. That would carry it back to 1943. Then your statement there is not correct, or this statement is not correct, is that right?

A. I don't know who said that.

By Mr. Eben: The purpose of the examination is much more evident than it was before.

828 By the Court: Overruled.

By Mr. Eben: I have not stated my objection. May I be permitted to do so?

By the Court: ~~Very~~ briefly.

By Mr. Eben: I say your Honor should advise the witness of her constitutional rights.

By the Court: Overruled.

By Mr. Eben: I would like the record to note that.

By Mr. Downing:

Q. You were present when Marcel signed that document, is that right?

A. Yes, sir.

Q. Both you and Marcel were together?

A. Yes.

Q. You saw Marcel sign it, is that right?

A. He was standing next to me.

Q. There was just you and Marcel and the clerk at the time making the passport application, is that right?

A. Yes.

Q. Did Marcel write in the four years or did you write in the four years, or did the clerk write in the 829 four years?

A. I don't know.

Q. You do not now recall?

A. No.

By Mr. Downing: If your Honor please, that is all I have about this document at this time. It is a good breaking-off point.

By the Court: We will recess at this time, Ladies and Gentlemen, until two o'clock.

(Thereupon the jury was excused until two o'clock p.m. of the same day, January 12, 1951, after which the following proceedings were had out of the presence and hearing of the jury:)

By the Court: Young lady, just wait a minute.

By the Witness: Yes, sir.

By the Court: Don't discuss this case with anyone during this recess we are about to take, and return here at two o'clock. Do not discuss the case with anyone. Do not discuss your proposed testimony or the testimony 830 you have given with anyone.

Return here at two o'clock.

By the Witness: Yes, sir.

(Thereupon a recess was taken to 2:00 o'clock p.m. of the same day, January 12, 1951.)

831

• • (Caption—No. 50 CR 464) • •

Chicago, Illinois
January 2, 1951
2:00 o'clock p. m.

Met pursuant to recess.

Present:

Mr. Downing
Mr. Owen
Mr. Gerber
Mr. Bartoline
Mr. Sokol
Mr. Eben
Mr. Watt
Weissbourd

And Thereupon the following proceedings were had herein:

By the Clerk: Case on trial.

By the Court: Proceed.

MRS. LEOPOLD KNOLL, a witness called by the Court, having been previously sworn, testified as follows:

Cross Examination (Cont'd) by Mr. Downing.

832 Q. What is your name, please?

A. Mrs. Leopold Knoll.

Q. You are the same witness who testified this morning and was sworn, is that right?

A. Yes, I am.

Q. Now, you went to Paris November 1st, 1947?

A. Mr. Downing, I would like to ask a question, if I may.

By Mr. Downing: You may direct your question to the Court.

By the Witness: Judge Barnes, may I ask a question, please?

By the Court: Yes.

By the Witness: I would like permission of the Court to see counsel.

By the Court: Whom have you talked with since you left here at 12 o'clock?

By the Witness: My mother.

By the Court: Only?

By the Witness: Yes, sir.

By the Court: Whom had she talked with?

By the Witness: No one.

By the Court: Did she talk with counsel?

By the Witness: No, sir, she did not.

833 By Mr. Downing: Your Honor, there was a little conversation between—

By Mr. Eben: This should be out of the presence of the jury, I submit..

By the Court: Step into the jury room, ladies and gentlemen.

(The following proceedings were had out of the presence and hearing of the jury:)

By the Court: Where is your counsel, madam?

By the Witness: I have none, sir. I probably will be able to get one by tomorrow morning.

By the Court: Have you had counsel in this case?

By the Witness: Mr. Eben has been my counsel.

By the Court: Well, step out and advise with Mr. Eben.

By Mr. Eben: May it please the Court, I was retained in the case by Mrs. Knoll's husband to represent him as a defendant, and I was representing myself as representing Mr. Knoll, not Mrs. Knoll. I think that she should have independent counsel. I suggested that before.

By the Court: Whom do you want to get, madam?

By the Witness: I don't know, sir.

834 By the Court: Now, I will advise you. How do you think she should be advised, counsel for Mr. Leopold Knoll? Now, advise the Court how this Court should advise the witness.

By Mr. Eben: I think she ought to be advised that she has a constitutional privilege not to give any incriminating testimony against herself. I think your Honor should say that she does have that privilege, that she may not ask for that privilege generally, but only in connection with questions which she thinks will incriminate her, or the answer will incriminate her, she ought to be permitted to advise with her counsel to determine whether or not she should answer.

By the Court: Do you understand what counsel said?

By the Witness: Yes, sir. I was told to get the advice of counsel.

By the Court: I am advising you as Mr. Eben has stated. I, the Court, will advise you that you have the right to refrain from incriminating yourself. If you think

any answer given to any question put to you will in-

835 criminate you, you have the right to refuse to answer, on the ground it will incriminate you. If you are in doubt about it, you advise the Court that you want the advice of your counsel, and the Court will give you that opportunity. Do you understand what I say to you?

By the Witness: Yes, sir, I do.

By the Court: Bring in the jury.

By Mr. Eben: She has no counsel, that is the point.

By the Court: No, I will give her the right when the time comes.

By Mr. Eben: Let me ask you a question. Did you communicate with this woman's mother?

By Mr. Eben: No.

By the Court: At noontime?

By Mr. Eben: No, sir.

By the Court: Any of your associates?

By Mr. Eben: I should say no. They were with me all during the noon hour.

By the Court: They did not communicate with her?

By Mr. Eben: They did not.

By the Court: Bring in the jury.

836 (The following proceedings were had in the presence and hearing of the jury:)

By Mr. Downing:

Q. Now, you went to Paris November 1st, 1947, is that right, madam?

A. Yes, sir.

Q. And you went by TWA airplane, is that right?

A. That is right.

Q. Did you pay a thousand dollars for your round trip ticket, is that right?

A. No, not that much.

Q. How much did you pay?

A. Between six and seven hundred dollars for the ticket.

Q. As a matter of fact, didn't you tell me once before you paid a thousand dollars?

A. No, I never told you that.

Q. You paid between six and seven hundred dollars?

A. Yes.

Q. Where did the money come from you used to purchase the ticket?

A. I refuse to answer the question.

By the Court: On what ground, madam?

By the Witness: On the ground that it may incriminate me.

By the Court: You need not answer.

By Mr. Downing:

Q. Did you withdraw the money from your bank account to the Sears Community Bank?

A. Yes, I did.

Q. Did you withdraw the entire amount from the Sears Community Bank?

A. I withdrew \$1,000.

Q. Did you withdraw that just immediately prior to the time you left?

A. No, just about six or seven weeks before I left.

Q. Approximately how long?

A. About six or seven weeks before I left.

Q. What was the exact amount you withdrew at that time?

A. \$1,000.

Q. Was the name of the account Grace Klemtner and Zelba Klemtner?

A. That is right.

Q. You withdrew at that time \$1,000?

A. Yes, sir, I did.

Q. Thereafter, did you withdraw any money from the account?

838 A. No, I did not.

Q. Is Zelba Klemtner your mother?

A. Yes, she is.

Q. As a matter of fact, that bank account does not show any withdrawal of a thousand dollars, isn't that right?

A. No, it is not right.

By Mr. Eben: Objected to. The statement will speak for itself, if they had it, it is the best evidence.

By the Court: Sustained.

By Mr. Downing: Will you mark these Government's Exhibits 26 and 27 for identification, please.

(Said documents were marked Government's Exhibits 26 and 27.)

839 By Mr. Downing:

Q. I now show you a document which is identified as Government's Exhibit 27, marked for identification, and ask you to look at that and ask you if you have ever seen the original of that before.

A. This looks like the application for an account.

Q. I ask you to look at that and ask you if you find your handwriting on there.

A. Yes, that is my handwriting.

Q. By that, you refer to the name Grace Klemtner?

A. Yes, I do.

Q. Address, 2501 North Avers?

A. That is right.

Q. Occupation, copywriter?

A. That is right.

Q. Birthplace, Chicago. Is that right?

A. Yes, it is.

Q. I ask you if this document was used by you at the time you opened the account at the Sears Community Bank in Chicago?

A. It may be, yes.

Q. Well, is it or isn't it?

A. What is the date on that?

Q. That is April 7, 1947.

840 A. That would be approximately the time I opened the account.

By the Court: I cannot hear what the witness said.

By the Witness: Yes, sir, it is mine.

By Mr. Downing:

Q. There is no question that this represents the signature card of the Sears Community Bank?

A. That is right.

Q. I ask you to look at Government's Exhibit 26, marked for identification, and ask you if you have seen the original of that before.

A. This looks like a copy of the bank book.

Q. I ask you to look at the writing at the top, the name. That is your writing, Grace Klemtner, is that right?

A. Yes.

Q. Now, I ask you to look at that document, and ask you if you find any withdrawals on there in the exact amount of \$1,000 approximately six weeks before November 1, 1947.

By Mr. Eben: I object to that. The document will speak for itself, I assume, assuming it is a genuine document.

841 By the Court: She may state.

By Mr. Eben: I point out to the court that this is a photostat she is examining.

By the Court: I understand.

By Mr. Eben: There may have been alterations, and so on.

By Mr. Downing: Will you read the last question?

(Question read.)

By the Witness:

A. That statement is wrong.

By Mr. Eben: Just a minute, please. May I point out to the court in connection with a prior witness, Mrs. Munio Knoll, Mrs. Knoll was asked to point out something in her petition for divorce, and your Honor ruled that the document would speak for itself. That is on cross examination.

By the Court: It does sometimes.

By Mr. Eben: I submit the circumstances are the same here.

By the Court: Overruled.

By Mr. Downing:

Q. You say this bank statement is wrong, is that 842 right?

A. I believe so, yes.

Q. Now, you participated in a marriage ceremony in Paris, France, on November 6, 1947?

A. Yes.

Q. With whom?

A. With my husband Leopold.

Q. That is the defendant Leopold Knoll in the court room?

A. Yes.

Q. Whereabouts in Paris was this marriage ceremony performed?

A. Something comparable to the city Hall here in Chicago.

Q. Do you recall by whom it was performed?

A. By a woman.

Q. Who was present at the time the ceremony was performed?

A. Bess Knoll and one of Poldi's cousins.

Q. By Bess Knoll, you mean Bess Osborne, the person you saw come out of the court room this morning?

A. Yes, sir.

Q. When you first met Bess, was she introduced to you as Bess Osborne?

843 A. I don't remember, sir.

Q. You saw Bess quite a few times there in Paris?

A. I met Bess one day when I was sick, and she came in and asked me if she could help me or give me anything.

Q. How long was that prior to the time you went through this marriage ceremony with Leopold Knoll?

A. It was before. I married Leopold.

Q. Now, at the time you went through the ceremony, did you receive a wedding ring from Leopold Knoll?

A. The French law does not require it.

By Mr. Downing: Will you read the question?

(Question read.)

By the Witness:

A. No, I did not.

By Mr. Downing:

Q. Have you to this date received a wedding ring from Leopold Knoll?

By Mr. Eben: Objection, immaterial.

By the Court: Overruled.

By the Witness:

A. No.

By Mr. Downing:

Q. What was the date you first met Leopold Knoll?

844 A. He was with his sister when I arrived in Paris.

By Mr. Downing: I ask that the answer be stricken as not responsive.

By the Court: Strike it out.

By Mr. Downing: Read the question, Mr. Reporter, please.

(Question read.)

By Mr. Witness:

A. Mr. Downing, I don't remember whether I got to Paris November 1st or 2nd. What date was it?

By Mr. Downing:

Q. If the records show you left here on November 1st, approximately how many hours did it take you to get to Paris?

A. A day and a night. It was on the 2d.

Q. It was on November 2d or November 3d, is that right?

A. Yes, sir.

Q. Compensating for the time difference between Chicago and Paris.

A. If I am correct, I think the date there would have been different from here.

Q. Be that as it may, it took you a day and a night, is that right, ma'am?

845 A. Yes.

Q. You met Leopold at the air port, is that right?

A. Yes, I did.

Q. So that there was a difference between November 2d, let us say, and November 6th, between the date you first met him and the date you were married?

A. Yes, sir.

Q. Had you ever heard of Leopold prior to the time you went to Paris?

A. No, sir, I did not.

Q. So that that was the first date you had ever met him?

A. Yes, sir.

Q. You had never talked to Marcel Lutwak the defendant, or the defendant Regina Treitler, about Leopold Knoll prior to the time you left Chicago?

A. I refuse to answer the question.

By Mr. Downing: The witness has refused to answer the question.

By the Court: You refuse to answer?

By the Witness: Yes, sir.

By the Court: On the ground it may incriminate you?

By the Witness: Yes, sir.

846 By the Court: Put another question.

By Mr. Downing:

Q. As a matter of fact, this \$1,000 you referred to previously was paid to you on or about October 30, 1947, by Marcel Lutwak, isn't that right?

A. No, sir, that is not so.

Q. You had never received any money from Marcel Lutwak on or about November 1, 1947?

A. I never received any money from Marcel.

847 Q. At no time?

A. At no time.

Q. You have never at any time received \$50 for incidental expenses?

A. Yes, a loan of money at New York.

Q. That was after you returned from Paris?

A. Yes, sir.

Q. So the first answer should be changed to add \$50?

A. I received \$50 from Marcel as a loan and it was repaid.

Q. That was after you came back, after you had gone through this marriage ceremony?

A. Yes, sir.

Q. Now, after you arrived in Paris, you stayed at the le Khedive Hotel, is that right?

A. Yes, sir, that is correct.

Q. I believe you previously testified that Regina Treitler made arrangements to get that room for you?

A. Yes, sir.

Q. However, you had accommodations through some travel bureau at some other hotel?

A. At the Hotel Paris.

Q. Why was it that you did not stay at the hotel where you had the reservation?

848 A. Because I was not certain I would meet Mrs. Treitler. When I met her, she told me she had accommodations at her hotel, and I went with her.

Q. As a matter of fact, you had already submitted a document to the Department of State at the time you applied for your passport, indicating that you had a reservation in Paris, isn't that right, ma'am?

A. I don't recall.

Q. I now show you Government's Exhibit 6, marked for identification, which I have previously shown to you this morning, to the sheet attached thereto, entitled "Central National Bank", and ask you to look at that and ask you if that refreshes your memory?

A. Yes, it does.

Q. If you will look at the next sheet attached to it, does that refresh your memory?

A. No, it does not.

Q. The speed letter addressed to you, you have never seen that before?

A. No, I have not.

Q. Will you read it, please, not out loud, but just to yourself?

A. I absolutely do not recall seeing this letter.

849 Q. Now, will you look at the letter from the Central National Bank, to see if there is any relationship between those two?

A. I do not understand your question, Mr. Downing.

Q. By looking at this page entitled "Central National Bank", which is a part of Government's Exhibit 6, marked for identification, and reading the contents of that page, are you able to determine now whether or not you have seen that sheet entitled "Passport Division, Speed Letter", which is also attached, and which you said you did not recall having seen before?

A. That is the letter addressed to me?

Q. That is a Passport Division speed letter.

A. This letter indicates it was mailed to my home.

Q. Yes?

A. I have no recollection of ever seeing it.

Q. How do you account for the letter in the file from the Central National Bank concerning reservations? That is the one I previously showed you.

A. I am sorry, I do not understand your question.

Q. Did you take this and give it to the proper authorities, the original of this letter entitled "Central National Bank"?

A. No, I did not.

Q. "It was sent in from the Central National Bank, 850 is that right, to the person addressed on the letter?"

A. It was never sent to me. I have never seen it.

Q. Did you have reservations at the Hotel Paris?

A. I made that statement a few minutes ago.

Q. This speed letter, which is a part of this, you have never seen before?

A. No, I have not.

Q. How long did you stay at the le Khedive Hotel in Paris?

A. Oh, about three weeks.

Q. Actually, you stayed there until about the 9th or 10th of November, didn't you?

Q. Now, Bess Osborne stayed there at the Royal Monceau Hotel when you moved to the Royal Monceau Hotel, is that right?

A. Yes, she did.

Q. Do you know that Bess left Paris about the 12th of November?

A. I do not recall the date.

Q. Well, you went to England from Paris on the 13th of November, didn't you?

A. Yes, I did.

Q. You knew that Bess and Munio or Sygmunt had 851 gone from Paris at the time you went to England?

A. I don't recall.

Q. Well, how many days did you stay at the Royal Monceau Hotel while Bess was there?

A. I was there about two weeks.

Q. At the Hotel Monceau?

A. Yes.

Q. Does that include the time while you were in England, or is that exclusive of the time that you were in England?

A. No, I retained my room.

Q. How were you registered at the Hotel Monceau?

A. As my passport said, Grace Klemtner.

Q. How were you registered at the le Khedive Hotel?

A. As Grace Klemtner.

Q. Did you change it again?

A. I assumed my husband took care of those things.

Q. You did not change it personally?

A. No, sir.

Q. Did Leopold Knoll also live at the le Khedive Hotel?

A. He stayed with me.

Q. Did he register at the le Khedive?

A. No, he did not.

852 Q. By staying there, you mean he came and visited you?

A. I mean he came and he lived with me.

Q. Did Bess Osborne have a room right next to you at the Royal Monceau Hotel?

A. Yes, she did.

Q. They were adjoining rooms, is that right?

A. Yes, sir.

Q. So, on the 13th of November, about a week after your marriage, you went to England from Paris, is that right?

A. It seems to me it was more than a week.

Q. Well, if your passport says it was on the 13th that you went to England, you won't argue with the date therein, will you?

A. No.

Q. How long did you stay in England?

A. Just a few days.

Q. Well, a week or ten days or two weeks?

A. No, two or three days.

Q. Was Leopold Knoll with you in England?

A. No, he was not.

Q. What kind of work were you doing in England, research work?

853 A. That was the time Elizabeth got married. Queen Elizabeth, and I went to watch the festivities.

Q. You went over to see Queen Elizabeth get married?

A. No, I would not state it as such, I went over to visit England.

Q. After you came back to Paris, you again resumed living at the Royal Monceau, is that right?

A. I did.

Q. Why did you change hotels from the le Khedive, that was where Leopold Knoll was living, wasn't it?

A. Because something happened between my husband and myself.

Q. So you moved and went to the Royal Monceau?

A. Yes, sir, I did.

Q. Leopold actually was living at the le Khedive; is that right?

A. Yes, sir, he was.

Q. Now, when did you leave Paris, that is, to return to the United States?

854 A. On December 4th or 5th, I don't recall the date.

Q. Of 1947?

A. Yes.

Q. With whom did you come to the United States?

A. I returned with my husband.

Q. That is the defendant Leopold Knoll, is that right?

A. Yes, sir.

Q. How did you come?

A. We flew.

Q. Who paid, if you know, the fare for Leopold?

A. I don't know who paid Leopold's fare.

Q. Did Leopold pay your fare back to the United States?

A. I had a round trip ticket when I left.

Q. Where did you land in the United States?

A. LaGuardia Air Port in New York.

Q. And at that time, were you with Leopold when he applied for admission into the United States?

A. I was.

Q. Were you present when he appeared before the Immigration Inspector there and filled out certain forms?

855 A. We were together.

Q. I beg your pardon?

A. We were together.

Q. I now show you Government's Exhibit 3 in evidence, and ask you to look at this, and ask you if you have seen that before?

A. I do not believe I have seen this.

Q. You do not believe you have seen this before; directing your attention to the signature of Leopold Knoll, do you recall having seen that before on that document?

A. I would like to ask you a question.

By Mr. Downing: Direct any questions to the court.

By the Witness: May I ask a question, sir?

By the Court: Yes.

By the Witness: I want to know if this is the paper that Leopold filled out when we arrived in New York.

By Mr. Downing: That, according to the evidence was filled out in New York, that is right, at the port of entry.

By the Witness:

A. Well, I was with him when he filled it out.

856 By Mr. Downing:

Q. So that you were present when he did fill this out?

A. Yes.

Q. And you were questioned along with Leopold by the Government Inspector, is that right?

A. Yes, I was.

Q. Did you see the document then at that time?

A. No, sir.

Q. Did you ever reside in Chicago at 35 South Central Park, Chicago, Illinois?

A. No, I did not.

Q. Have you ever lived as man and wife with Leopold Knoll at 35 South Central Park Avenue, Chicago, Illinois?

A. No, not at that address.

Q. With reference to this information concerning the serial number in the armed forces of the United States—

A. That is my serial number.

Q. That is your serial number?

A. Yes.

857 Q. Now I direct your attention to Government's Exhibit 12 and ask you to look at the sheet attached thereto, entitled, "Passenger Card," and ask you to look at that and ask you if you have seen the original of that before.

A. Yes, I have.

Q. When did you see the original of that document before?

A. I believe this is the document that was filled out in New York.

Q. At the same time that you came in with Leopold to the United States?

A. I think so.

Q. Now directing your attention to Question No. 8 on this document, which reads:

"Name and address of friend or relative to whom destined in that country.

"Grace Knoll, 35 South Central Park, Chicago, Illinois."

Are you Grace Knoll?

A. Yes, I am.

Q. Did you ever live at 35 South Central Park, Chicago, Illinois?

A. No. I have not.

858 Q. And you have never lived up to this time at that address, have you?

A. No.

Q. Since returning to the United States on or about December 5, 1947, and up to April 1, 1950, did you ever live with Leopold Knoll as man and wife in the United States?

A. No, I did not.

Q. Between the date of December 5, 1947 and April 1, 1950, did you ever have any sexual relations with Leopold Knoll in the United States?

A. Your Honor, I have to ask a question on dates again.

By the Court: You have to what?

By the Witness: I have to ask a question concerning dates. I don't remember the dates.

By the Court: She says she doesn't remember dates. By Mr. Downing:

Q. Go ahead, ask your question.

A. I would like to know what date it was that I returned to Chicago for the first federal grand jury.

859 Q. That was April 5th.

A. April 5th. That is when I was with my husband.

Q. I am speaking of April 1, 1950. That is, between December 5, 1947, and April 1, 1950—I should say December

5, 1947, and April 1, 1950, did you ever have, in the United States, any sexual relations with Leopold Knoll?

A. Yes, I did.

Q. When was the first date?

A. I don't remember.

Q. Was it immediately upon your return from Paris?

A. No, it was when I returned to Chicago from Los Angeles.

Q. And by that you are referring to on or about April 1, 1950?

A. Yes.

Q. After you had received a subpoena to appear before the Federal grand jury in connection with this matter.

A. Yes, it is.

Q. But up between those dates had you ever had any sexual relations?

A. No.

Q. After you landed in the United States Jane 860 Turner met you there at the air port, didn't she?

A. Yes.

Q. And Marcel Lutwak, the defendant, and Munio Knoll, the defendant, were also present?

A. Yes.

Q. You went to live in the Governor Clinton Hotel, is that right?

A. I believe that was the hotel.

Q. Is there any question in your mind?

A. I don't remember the name.

Q. But you went to live at a hotel with Jane Turner, is that correct?

A. Yes, I did.

Q. Leopold Knoll didn't live there, did he?

A. No, he did not.

Q. And you and Jane stayed there for about two or three days?

A. That is correct.

Q. And then you and Jane came to Chicago by train?

A. Yes, I did.

Q. And did Leopold Knoll accompany you?

A. No, he did not.

Q. And you and Jane resided at some friend's house here in Chicago for a day or two, is that right?

861 A. That is correct.

Q. Leopold Knoll didn't live there, did he?

A. No, he did not.

Q. Did you see him at that time in Chicago?

A. No, I did not.

Q. You knew that he was in Chicago?

A. Yes, I did.

Q. Then you and Jane left Chicago in the middle of December, 1947, and proceeded to Los Angeles?

A. That is correct.

Q. When you came to Chicago at that time did you see your mother?

A. No, sir, I did not.

Q. You did not call your mother and tell her you had been married?

By Mr. Eben: I object. I object to that. What has that got to do with this particular thing? It is conversation outside the presence of any defendant here.

By the Court: Objection overruled.

By Mr. Gerber: Objection as to Munio Knoll.

By the Court: Overruled.

862 By Mr. Downing:

Q. Did you not call your mother and inform her you were in Chicago at that time, did you?

A. No, I didn't.

Q. And you didn't call her and let her know you had ever been married up to that time, had you?

A. No.

By Mr. Eben: Same objection.

By the Court: Overruled.

By Mr. Downing:

Q. When you went to Paris you told your mother you were going to get a job for a governmental agency, isn't that right?

What is your answer?

A. I didn't answer.

By Mr. Eben: Same objection.

By Mr. Gerber: Objection.

By Mr. Sokol: Objection.

By the Witness: What was the question?

(Question read.)

By the Witness:

A. That is correct.

By Mr. Downing:

Q. After you and Jane reached Los Angeles, what
863 did you then commence doing?

A. To look for employment.

Q. And you thereafter became employed, did you?

A. Not immediately, no.

Q. Well, some time thereafter you did, is that right?

A. That is correct.

Q. You and Jane resided at a couple of addresses out there between the date you went there and the present date, is that right?

A. That is correct.

Q. When you first went there you rented the apartment or the rooms that you were renting under the name of Grace Klemtner, isn't that right?

A. Yes.

Q. When you received letters from your mother you received them under the name of Grace Klemtner?

A. Yes, I did.

By Mr. Eben: Objected to.

By the Court: Overruled.

By Mr. Downing:

Q. Then you returned to Chicago in October of 1948?

A. That is right.

Q. And your sister got married at that time?

864 What is the answer?

A. Yes.

Q. The reporter can't get the nod of your head.

A. I am sorry.

Q. You stayed at your home at that time?

A. Yes, I did.

Q. Did you tell your mother or sister at that time that you had gone through a marriage ceremony in Paris?

A. No, and for a good reason.

By Mr. Downing: I move to strike out the last part of the answer, as not responsive.

By the Court: "for a good reason" may go out.

By Mr. Downing:

Q. And this time, while you were in Chicago; how long were you here?

A. About two weeks.

Q. And you had no relations as man and wife with Leopold Knoll during that period of time?

A. No.

Q. What is your answer?

A. No.

Q. And then you went back to Los Angeles again?

865 A. That is correct.

Q. And you have been going to school there ever since?

A. Yes.

Q. What kind of schooling are you taking?

A. I am working for my bachelor's degree.

Q. And at 1161 $\frac{1}{2}$ South Bonnie Brae in Los Angeles you are known as Grace Klemtner, when you rented that apartment, is that right?

A. That is correct.

Q. In fact, you are supposed to be back taking examinations next week, as you told me the other day, is that right?

A. This is the end of the semester.

Q. Did Leopold Knoll ever come out to Los Angeles prior to April 1, 1950?

A. No, he did not.

Q. As a matter of fact the only purpose of your marriage to Leopold was solely to bring Leopold Knoll to the United States, isn't that right?

A. No, it is not.

Q. As a matter of fact, you did not tell your mother that you ever went through a marriage ceremony until April 5, 1950, is that right?

866 By Mr. Gerber: I object.

By Mr. Eben: I object, repetitious.

By the Court: Overruled.

By Mr. Downing: Will you read the last question?
(Question read.)

By the Witness:

A. That is correct.

By Mr. Downing:

Q. When did you tell your sister—

By Mr. Eben: I object to that.

By the Court: Overruled.

By the Witness:

A. I don't recall the date, but it was much before that.

By Mr. Downing:

Q. That was after the immigration authorities had talked to your sister and told your sister that you had gone through a—

A. Yes.

Q. —marriage ceremony, is that right?

A. Yes.

By Mr. Downing: May I have just a moment, your Honor?

867 By Mr. Downing:

Q. While you were in Paris you didn't pay your hotel bill at the le Khedive and the Royal Monceau?

A. Poldi and I shared our expenses.

Q. Did you pay your hotel bill while you were in Paris?

A. Judge Barnes, I can't answer the question any other way.

By Mr. Downing: If your Honor please, I submit the question is answerable by yes or no.

By the Court: The question is answerable yes or no.

By Mr. Downing: Will you read the question again, Mr. Reporter, please?

By the Court: Did you pay your hotel bill?

By the Witness: We both paid my expenses—

By the Court: Who?

By the Witness: My husband and myself, we shared our money.

By the Court: Did you pay your—

By the Witness: I may have given it to the concierge.

By the Court: To the who?

868 By the Witness: The management of the hotel.

By Mr. Downing:

Q. You may have. You are not sure, is that right?

A. I believe Poldi was with me when I paid my bill.

By the Court: I can't hear.

By the Witness: I said, I believe my husband was with me when I checked out of the hotel.

By Mr. Downing:

Q. At both hotels, the le Khedive and the Royal Monceau?

A. Yes, he was with me all the time.

Q. And he paid your bills in Paris, is that right?

A. No, that is not right.

Q. And he hasn't been with you all the time since you have been in the United States, though?

A. No, he has not.

By Mr. Downing: You may cross examine. I am through with the witness.

869

Cross Examination by Mr. Eben.

Q. Mrs. Knoll, when you arrived in Paris in 1947 the latter part of the year you and your husband-to-be,

Leopold Knoll, had a number of conversations, didn't you?

A. Yes.

Q. Do you recall a specific conversation in which you told Leopold Knoll that you did not think that you would go ahead with the marriage?

A. I don't remember.

Q. For the purpose of refreshing your recollection, do you recall any occasion in Paris prior to your marriage to Leopold Knoll when he told you that if you did not intend to marry him and remain married to him, that he did not want to go ahead with the marriage, and if it was just your purpose in coming over to France to marry him, to get him into the United States, and that was all, he didn't want to marry you?

A. That was not what he wanted.

Q. Pardon?

A. That was not what he wanted.

Q. I can't hear.

870 A. Leopold wanted me for his wife, and he always has and he still does.

Q. Did he tell you that in Paris?

A. Yes, he did.

Q. At that time you said to him that you wanted to think it over, didn't you?

A. Yes, I did.

Q. And Miss Bess Osborne was present at that particular conversation, wasn't she?

A. Yes, she was.

Q. And isn't it a fact that after Leopold told you that he wanted to marry you, and marry you for permanent purposes, if I may paraphrase what you have just said, that you left the room for a short time to consider the whole matter, isn't that true?

A. Yes.

Q. Did that happen at the Hotel le Khedive?

A. Yes, it did.

Q. And you thought the matter through, did you not?

A. Yes, I did.

Q. And then you returned to the room where Leopold was, isn't that a fact?

A. Yes.

Q. And did you then tell him that you would marry
871 him for all time to come?

A. Yes, sir, I did.

Q. And he said he would go through with the marriage then, is that right?

A. Yes, sir.

Q. And that he would marry you?

A. Yes.

Q. All right. That marriage was consummated, was it not?

A. Yes, sir.

Q. In Paris?

A. Yes.

Q. And since April 1, 1950, which is an arbitrary date that the District Attorney has picked—

By Mr. Downing: Object to the characterization as arbitrary.

By the Court: Strike it out.

By Mr. Eben:

Q. Since April 1, 1950, concerning which date you testified in response to questions put to you by the District Attorney, you have lived with your husband as man and wife, haven't you?

A. Yes.

Q. On a number of occasions?

872 A. Yes.

Q. And here in Chicago, is that true?

A. Yes.

Q. Do you and Leopold intend to live as husband—
Strike that.

Do you intend to live with Leopold as his wife permanently?

By Mr. Downing: I object.

By the Witness:

A. I certainly do.

By Mr. Eben: I think it is most material, particularly in view of the cross examination.

By the Court: Yes, I think she may answer.

By Mr. Eben: Thank you.

By the Court: No, don't thank me. I am just giving you a ruling.

By Mr. Eben. All right, I won't.

By Mr. Eben:

Q. Will you answer the question, please?

A. Will you ask it again, please?

Q. Pardon?

A. Will you ask me the question again?

By Mr. Eben: Will you repeat the question, Mr. Reporter?

873 (Whereupon the following question was read by the reporter:

"Q. Do you intend to live with Leopold as his wife permanently?")

By the Witness:

A. I intend to exert every energy to make Leopold a very good wife.

By Mr. Eben:

Q. Has Leopold indicated his intention to live with you?

A. Yes, he has.

Q. When you arrived in this country an application for admission to the United States was filled out on behalf of Leopold Knoll which application has been marked Government's Exhibit 3, is that right?

A. Yes.

Q. Is that Leopold's signature which appears thereon?

A. This one is.

Q. At the bottom?

A. Yes.

Q. Were you present when that signature was affixed?

A. Yes, I was.

Q. Do you know who placed on that particular exhibit the writing which appears in red ink?

874 A. No, sir.

Q. For the purpose of refreshing your recollection, was that placed on there by the Immigration Inspector before whom you and Leopold appeared?

A. I don't know whether Leopold filled it out or the Inspector.

Q. Do you recall, Mrs. Knoll, what happened when you and Leopold arrived on the plane at La Guardia Air Port in New York?

A. Yes, sir, I do.

Q. You were met by an Immigration Inspector, were you?

A. That is correct.

Q. And you were taken to his office, or to an office?

A. Yes.

Q. And at that place the Immigration Inspector put questions to you and Leopold, did he not?

A. That is right.

Q. Did you make the answers to those questions, or did Leopold?

A. To those he directed me to.

Q. Beg your pardon?

A. To the questions he directed to me, I answered.

Q. Do you know whether or not the information 875 which appears on Government's Exhibit 3 was obtained from you or from Leopold or both?

A. I think both, sir, because Leopold had language difficulties.

Q. Excuse me?

A. Leopold had language difficulties and I would try and translate for him.

Q. After that document was signed it was given to the Immigration Inspector, isn't that true?

A. I believe so.

Q. And then you and Leopold entered into the country?

A. That is right.

Q. Is that right?

A. Yes.

Q. That occurred in La Guardia Air Port in New York City, did it not?

A. Yes, it did.

Q. Leopold was sick, was he not, coming over?

A. Yes, very sick.

Q. What was the matter with him, if you know?

A. He was very air sick.

Q. It was his leg—

A. He has a bad leg, too.

Q. Excuse me?

876 A. He has a bad leg, too.

Q. And when he arrived on this side of the water it was necessary, was it not, for him to receive a hospital and doctor's care, isn't that true?

A. Yes.

Q. And as a result Leopold was taken by his family to Florida?

A. Yes.

Q. Upon his arrival here, isn't that right?

A. Yes.

Q. Now, you went on to California with Miss Turner?

A. Yes.

Q. You went there, did you not, for the purpose of going to school, isn't that true?

A. No, it is not true.

Q. What was the purpose of your going there?

A. I went because I was very much upset by what happened between my husband and myself.

Q. Between whom?

A. Between Leopold and myself, and it was my hope to get away from my family and for us to start living together alone.

Q. What were these alters that occurred to which you have just referred?

877 A. Mr. Eben, when two people marry, there are adjustments that have to be made. I was not able to make mine at that time.

Q. You could not make those adjustments with Leopold while your family and his family were around; is that correct?

A. Yes.

Q. You went on to California, is that true?

A. Yes.

Q. And you were eligible under the GI Bill of Rights to go to school out there, were you not?

878 A. Yes.

Q. And you are going to school?

A. Yes.

Q. Under the G.I. Bill of Rights, is that right?

A. Yes.

Q. You were a WAC during the war, were you?

A. Yes, sir.

Q. You enlisted?

A. Yes.

Q. And served for a number of years?

A. Two years and two months, I think.

Q. What courses are you taking out there? You were teaching, or taking courses in teaching?

A. Yes, majoring in—

Q. Do you intend to be a teacher?

A. Leopold wants me to continue school, but I want to stay home with him.

Q. Leopold came back here to Chicago after he had received doctor's care, did he not?

A. Yes.

Q. Did you hear from him from time to time?

A. Yes, I did.

Q. And he sent you what money he could, didn't he?

A. Yes, he did.

879 Q. And you corresponded with him, did you not?

A. Yes, I did.

By Mr. Eben: I have only one or two more questions.

Q. You are here under a subpoena from the Government, are you not?

A. Yes, I am.

Q. When did you arrive, approximately?

A. January 3rd, I think.

Q. Since you have been here, you have been in the office of the United States Attorney here on a number of occasions, have you not?

A. Yes.

Q. Virtually every day, isn't that true?

A. Every day but yesterday, I think.

Q. And while you were there did you undergo interrogation?

A. I spoke to Mr. Downing in his office.

Q. And also Mr. Lawson?

A. Yes.

Q. He is the gentleman who usually sits behind Mr. Downing?

A. Yes.

Q. And you told them, did you not, substantially
880 what you have told the jury here today?

A. Yes, I have.

Q. On any number of occasions, haven't you?

A. Yes, sir.

Q. And all the answers you made to questions that Mr. Downing put to you, in so far as he previously asked you those questions, were the same as you made today?

A. Yes.

Q. Did he ask you anything today that he had not asked you in his office?

A. He did not ask me a great deal in his office.

Q. Excuse me.

A. We spoke very little when I was in his office. Talked about school and the theater, and how I am, and so forth.

Q. But he didn't discuss your testimony very much with you?

A. He asked me if there was anything further I had to tell him, and I said "No".

Q. When he said "further", to what was he referring, to previous testimony given by you?

A. I assume that is what he meant.

Q. All right. Were you told by anyone in the District Attorney's office or in the Immigration or Naturalization Service not to see your husband while you were here?

A. No, sir, I was not.

By Mr. Eben: That is all.

By Mr. Bartoline: No cross examination.

By Mr. Sokol: No cross examination.

By Mr. Downing: Any cross examination?

Recross Examination by Mr. Downing.

Q. In fact, you were subpoenaed to appear here on January 8th and not January 3rd, isn't that right?

A. Yes, sir, it is.

Q. In fact, you only talked with me once since you have been here, January 8th, on Tuesday evening?

A. Yes.

Q. (And the only other times you have been down there have been merely to check in, in order that you might get your statutory allowances as far as being a witness is concerned, isn't that correct?

A. Yes.

Q. And at that time you were down there I told you you did not have to say anything to me about this matter unless you voluntarily wanted to, is that right?

A. Yes.

Q. And at the time you were down there, you told me you wanted to know how soon you could get back because you had to take some examinations, some of them commencing on the 14th, but we later said it was the 15th, and you wanted to start the second semester, is that right?

A. No, sir. I asked you if you knew when I would be able to leave, because if I wasn't there on time for my examinations, I want to notify my instructors.

Q. That is substantially what I said, isn't that right?

A. I think it is a little different.

Q. You put it your way and I will put it my way. We had that conversation, isn't that right?

A. Yes.

Q. And at that time you were not questioned by me at all concerning this matter other than what I have indicated?

A. No.

Q. In fact, Mr. Lawson and I talked about the weather in California and your school?

883 A. It was a very courteous visit.

Q. In fact, all of our visits have been courteous, isn't that right?

A. That is true.

Q. Since April 1, 1950, what have you been doing about making a good wife for Leopold Knoll?

A. I have written him, I have urged him to take care of himself and I told him to have faith that this will be over and it will come out all right and the two of us will have a life together.

Q. He hasn't lived in Los Angeles since April 1, 1950, has he?

A. No, he hasn't.

Q. Now, prior to today you have talked to Mr. Eben about this matter, haven't you.

A. Not since I have been in town, no.

Q. Before then you had told him on other occasions that you have been in town since April 1, 1950?

A. If I remember correctly, I think I have seen Mr. Eben only once before.

Q. And you have talked to Mr. Watt quite a few times?

A. Yes, sir.

Q. About this matter?

A. I think I saw Mr. Watt in his office only once, too.

884 Q. But you talked to him in general about this matter?

A. Yes.

Q. And you have talked to Leopold Knoll about this matter up until the recess today?

A. No, Leopold doesn't talk to me about this.

Q. You have been talking to him?

A. I am living with him.

Q. You have been talking to him about other matters or about this matter up until recently—

A. Not about this matter.

Q. But you have been talking to him constantly since you have been back in Chicago, isn't that right?

A. Yes.

By Mr. Downing: That is all.

By Mr. Eben: A few questions.

Recross Examination by Mr. Eben.

Q. In view of the fact that you and Mr. Downing only talked about the California weather, which I agree is probably much better than we have here, did you ask him why he had brought you here?

A. No, sir.

Q. And did he say why?

A. No, sir.

885 By Mr. Eben: That is all.

By Mr. Downing: That is all.

Does the Court have any questions?

By the Court: No.

(Witness excused).

By Mr. Eben: May I have just a moment, your Honor?

By the Court: Yes.

By Mr. Downing: At this time, the Government would like to offer in evidence Government's Exhibit 4 marked for identification, which is under the seal of the Department of State, and which purports to be a photostatic copy of a passenger application of Regina Treitler.

I will do these all at once and then they can make their record.

Government's Exhibit 5, marked for identification, under the seal of the Department of State, which purports to be a photostatic copy of the Department of State, passenger application of Max Marcel Lutwak.

Government's Exhibit 6, marked for identification, which is under the seal of the Department of State, 886 purporting to be a photostatic copy of the Department of State passenger application of Grace Klemmer, which contains an affidavit of identifying witness of Max Marcel Lutwak.

Government's Exhibit 7, marked for identification, under the seal of the Department of Justice, Immigration and Naturalization Service, which purports to be a list or manifest of outbound passengers, aliens and citizens, for immigration officials at port of departure, for the S. S. Marine Tiger, sailing from New York, New York, July 21, 1947, bound for LeHavre, France, containing on line 1 thereof the name in full of Lutwak, Max M.

Government's Exhibit 10, marked for identification, under the seal of the Department of Justice, containing a photostatic copy of what purports to be the list or mani-

est of the alien passengers for the United States Immigrant Inspector at Port of arrival, S. S. Queen Mary, New York, September 9, 1947, which contains the name of a full of Lutwak, Max M., and Lutwak, Maria I., and additional information pertaining to each of those particular individuals.

Government's Exhibit 11, marked for identification, under the seal of the Department of Justice, Immigration and Naturalization Service, which purports to be a photostatic copy of the document, containing herein the passenger manifest dated November 12, 1947, originated at Brussels, destined to New York, La Guardia, containing the information thereon, on line 8, of Romankiewicz, Z., and line 9, Osborne, Bessie Romankiewicz, and additional information applicable to each of those two.

At this time we would like to move for the admission of each of these documents, heretofore enumerated.

By Mr. Sokol: As to number 4, which I believe bears Mrs. Reitler's signature, I have no objection to it going in.

With respect to those exhibits which do not bear Mrs. Reitler's name, I have a general objection with respect to their materiality:

By Mr. Gerber: As to Exhibit 11, on behalf of Munio Knoll, I have no objection to it going in. It concerns him and Mrs. Bessie Romankiewicz.

As to all the other exhibits he is now offering, I have the same objection, that they are immaterial and inadmissible against Munio Knoll.

By Mr. Bartoline: If the Court please, I have no objection to Exhibit 6, which bears Marcel Lutwak's signature, and also to No. 5, which also bears his signature. But I do object to 7 and 10, because they do not bear his signature, and I do not know that the information on there introduced properly. These are photostatic copies of something we know nothing about.

By Mr. Downing: They are photostatic copies of records which are admissible under the seal of the Department of Justice, Immigration and Naturalization Service, having jurisdiction over those records.

By Mr. Eben: They might be verified. The certification only says that this is a document that they had. That does not prove the authenticity of anything contained in there. There might be any number of people with those names.

By Mr. Downing: It is corroborated by testimony in the record.

By Mr. Eben: I have objections to all of them on the ground that they are immaterial and irrelevant and not competent as against my client.

By the Court: Any other objections?

The objections may be overruled and the exhibits will be received.

889 (Said exhibits, so offered and received in evidence, were respectively marked Government's Exhibits 4, 5, 6, 7, 10 and 11.)

By Mr. Downing: I have one more witness, who will take a short time.

By the Court: How long?

By Mr. Downing: I am ready to put him on. He should not take very long.

BEN J. TUNICK, called as a witness herein, on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Downing.

Q. Will you state your name, please?

A. Ben J. Tunick.

By the Court: How do you spell that?

By the Witness: B-e-n J. T-u-n-i-c-k.

By Mr. Downing:

Q. What is your address, sir?

A. 229 South Central avenue, Chicago.

Q. What is your business or occupation, please?

A. I am Cashier of the Sears Community State Bank.

Q. Where is that located, sir?

890 A. Homan and Arthington, Chicago.

Q. Chicago. Approximately how long have you been associated with that bank?

A. About twenty-five years, twenty-six.

Q. Will you explain briefly to the Court and jury the nature of your duties as cashier of the bank?

A. I am custodian of all records and operations of the bank.

Q. As custodian of the records of Sears Community Bank, are you acquainted with all the records made in the regular course of business of that bank?

A. I am.

Q. And you have been subpoenaed here to produce certain bank records concerning the account known as Grace Klemtner and/or Zelda Klemtner, is that right?

A. That is right.

Q. Do you have those documents with you that were indicated in the subpoena?

A. That is right.

Q. Do you have those documents with you that were indicated in the subpoena?

A. That is right, sir.

By Mr. Downing: I ask the Reporter to mark these Government's Exhibits 26, 27 and 28 for identification.

(Said documents were respectively marked Government's Exhibits 26, 27 and 28 for identification.)

By Mr. Downing:

Q. You have handed me here three documents which have been identified as Government's Exhibits 26, 27 and 28, each marked for identification. I ask you to look at them and ask you if those are records of the Sears Community Bank?

A. That is right. These are the bank's original records.

Q. With respect to each of these three documents, were each of those three documents, records which were prepared in the regular course of business of the bank?

A. Right.

Q. And was it the regular course of business of the Sears Community Bank to prepare such records at or about the time each of those documents were prepared?

A. That is right.

Q. Are these records which I have just shown you in your custody at this time?

A. Right.

Q. And they have been in your custody up to this date, is that right, sir?

92 A. That is right.

Q. Directing your attention to Government's Exhibit 26, marked for identification, without reciting the details thereon, will you explain briefly to the Court and jury what that document is?

A. This is the ledger record of the account showing the deposits and withdrawals made during the lifetime of this account.

Q. With respect to the first date in the upper left hand column, does that indicate the date the account was opened?

A. That is right. The account was opened March 5, 1947.

Q. Now, directing your attention to Government's Exhibit 27, marked for identification, I ask you to look at that and explain briefly to the Court and jury what that record is.

A. This is a signature card. At the time the account is opened the customer signs his or her name on this card for the bank's record.

Q. With respect to Government's Exhibit 28, marked for identification, I ask you to look at that and explain briefly to the Court and jury what that record is.

893 A. This record is a change of this account from a joint ownership—from an individual account to a joint ownership. In other words, another name was added to this account.

Q. And on what date was that other name added to the account?

A. April 7, 1937, this account was changed to a joint account.

Q. And does the name appearing on Government's Exhibit 27, marked for identification—is that the name under which the account was originally opened?

A. That is right.

Q. And that is the name it was known as when it was a single account, is that right?

A. Yes. It was known as Grace Klemtner and/or Zelda Klemtner.

Q. And the "and/or Zelda", was added approximately when?

A. On April 7, 1947.

Q. By inspection of this document, can you determine approximately what date that account was closed?

A. Yes. This account was closed, according to our record, July 9, 1949.

894 Q. With respect to each of these records, are they true and correct records of the Sears Community Bank, Chicago, Illinois?

A. They are.

By Mr. Downing: If your Honor please, the Government at this time would like to offer in evidence Govern-

ment's Exhibits 26, 27 and 28 each marked for identification, and ask leave of court to substitute photostats, in lieu of the originals, so that the originals may be returned to the witness.

They may cross examine.

By Mr. Eben: May I have a chance to examine them?

By Mr. Gerber: I object to their admissibility, on behalf of Munio Knoll, your Honor.

Cross Examination by Mr. Eben.

Q. Mr. Yunick—

A. Tunick.

Q. Excuse me?

A. Tunick.

Q. Oh, T, Tunick?

A. Yes.

Q. Tunick, Tunick.

95 A. Yes.

Q. Mr. Tunick, I show you Government's Exhibit o. 26 for identification, which you have identified as a ledger card. Will you tell the Court and jury in a general way how the figures which appear on that exhibit got there?

A. Well, these entries on this ledger card were posted on this card from deposits or withdrawals made during banking hours.

Q. And the withdrawals, how do they get on there?

A. They are posted from signed receipts that the customer takes out of the bank at the time they come in to withdraw.

Q. There have been occasions, have there not, in the Mars Community State Bank, where adjustments had to be made on ledger cards such as this exhibit, because of a mistake, or other?

A. Yes, occasionally there might be a mistake.

Q. And that happens with all banks, doesn't it?

A. As a rule.

Q. And the adjustment is made on the ledger card, so as to truly reflect the state of the account?

A. Yes. Any corrections would show on this ledger card.

Q. In examining that card, can you state whether or not a withdrawal was made on this account on or about the 20th of August, 1947?

A. That is right.

Q. Beg your pardon?

A. That is right, there was a withdrawal.

Q. In what amount?

A. August 20, 1947, of \$1250.

By Mr. Eben: That is all.

Redirect Examination by Mr. Downing.

Q. By examining that, can you locate any withdrawal in the amount of \$1,000 even on any day?

A. No, not on this account.

By Mr. Downing: That is all.

By Mr. Eben: I have two more questions.

Recross Examination by Mr. Eben.

Q. Assume that there was a withdrawal of \$1,000 and \$250 on that date. Would they appear separately or together?

A. Yes, they would appear separately.

Q. But that amount was drawn on that date?

A. \$1250, yes.

By Mr. Eben: That is all I have.

897 By Mr. Downing: That is all.

By the Court: Any objection?

By Mr. Gerber: As I have stated, I object as to Munio Knoll as to the admissibility of the exhibits. I didn't get a ruling on my objection.

By Mr. Eben: I object also as to Leopold Knoll.

By Mr. Sokol: Objection.

By the Court: What?

By Mr. Sokol: Objection.

By the Court: Overruled.

By Mr. Downing: May they be received?

By the Court: They may be received.

By Mr. Downing: May we have leave to substitute photostats?

By the Court: Any objection to substituting photostats?

By Mr. Eben: None by me as to the substitution.

By Mr. Gerber: No.

898 (Which said documents, so offered and received in evidence, were marked, respectively, Government's Exhibits 26, 27 and 28.)

By Mr. Downing: I would like to read a few documents.

May we have a little recess.

By the Court: Yes, take a short recess.

(Recess taken.)

(Whereupon the following proceedings were had out of the presence and hearing of the jury:)

By Mr. Downing: If your Honor please, I would like to have leave to read from exhibits, some of which I have not read as yet.

But before I get to reading the balance of the statements, as I have previously indicated, I have some questions and answers marked.

By the Court: Yes.

By Mr. Downing: I have other documents I would like to read, and I was wondering if the Court was interested in reading the balance of the statements while I am 899 reading the other documents.

By the Court: You indicated on this other one that there were certain questions and answers you thought ought to be eliminated. Counsel said, "No, they must all be read."

They forced me to read through and check it.

If counsel takes the same attitude I will have to read it.

Counsel afterwards read it and said, "That is right."

If counsel will do me the favor to tell me whether they really object to those or what they want done with them, we can save time.

By Mr. Sokol: Your Honor told me the other day that you would not make eliminations on my two exhibits. Is your decision still the same?

By Mr. Downing: I think there have been a couple of questions—I will give them to you to look at them; but there have been no changes on any of the others. That is, on Lutwak or Leopold Knoll, both of which counsel have seen themselves.

900 By Mr. Bartoline: I understand Mr. Downing is not going to read three questions on page 19 of Government's Exhibit 15, immediately after the words, "Inspector Lawson to Deponent," that the first three questions will not be read, and those are the only ones.

By the Court: Do you object to his eliminating those?

By Mr. Bartoline: No.

By the Court: Has anybody else an objection?

By Mr. Sokol: Now—

By the Court: Has anybody else an objection to the elimination?

By Mr. Gerber: Munio Knoll requests an instruction that none of the questions will be considered as to him.

By the Court: Does anybody have any objection to Mr. Downing's refraining from reading those three questions and answers?

By Mr. Bartoline: I now see an additional one which I have not seen before, an additional two.

901 It is all right. I have no objection to those two, and they are the last two questions and answers on page

By the Court: Does anybody else want those read, or are you willing to have them left out?

By Mr. Sokol: I don't know. I haven't seen them.

No, I have no objection on that.

By the Court: I understand no one of the defendant has any objection to Mr. Downing's refraining from reading the questions and answers which he discussed with Mr. Bartoline.

By Mr. Sokol: As to mine, 16 and 17, I am informed now there is one question on page 2—this is 1—

By Mr. Downing: The statement, and that question—

By Mr. Sokol: On 17, and this one here on page 2 of Exhibit 16—

By Mr. Downing: That is right.

902 By Mr. Sokol: I have no objection to the elimination of these two.

By the Court: Does anybody have any objection?

Mr. Eben: I have no objection to the elimination of questions.

By the Court: I want to make a record on your gentlemen, if you please. You are very technical. Is there any objection to the one Mr. Sokol—

By Mr. Eben: I have no objection to the deletion of questions.

By the Court: Nobody has. Now, what is this?

By Mr. Eben: With respect to Government's Exhibit 18, which purports to be a statement given by Leopold Knoll my position is that the exhibit is in, and it is in its entirety.

By the Court: You want it all?

By Mr. Eben: I want it all.

By the Court: All right, let it all be read.

955 By the Court: Let me speak to counsel. I suggest such if any suggestions with respect to instructions as counsel may desire to make, let them be presented in writing at the opening of court Monday with copies for your opponents.

I should be glad if the defendants' counsel combine in their suggestions, and let the Government's suggestions be marked in pencil at the lower righthand corner, and 956 let their suggestions be numbered 1, 2, 3 and so forth.

Let the defendants' suggestions be lettered A, B, C.

By Mr. Downing: Yes, sir.

By the Court: I should like to have your suggestions Monday morning when you come in.

By Mr. Downing: Yes, sir.

By the Court: Don't put any citations or any markings or any numbers other than just in pencil at the lower righthand corner as I have indicated.

By Mr. Downing: Yes, sir.

(Whereupon an adjournment herein was taken to 10:00 o'clock a. m. Monday, January 15, 1951).

965

(Caption—No. 50 CR 464)

Chicago
Monday,
Chicago, Illinois,
Monday, January 15, 1951,
10:15 o'clock a. m.

Met pursuant to recess.

Present:

Mr. Downing
Mr. Owen
Mr. Gerber
Mr. Bartoline
Mr. Sokol
Mr. Eben
Mr. Watt
Mr. Weissbourd

And Thereupon the following further proceedings were had herein:

By the Clerk: Case on trial.

(The following proceedings were had out of the presence of the jury:)

By Mr. Downing: If your Honor please, you asked us to bring in instructions. Some of these may not be applicable because I don't know what the defendants are going to do.

966 By the Court: Very well.

By Mr. Eben: The situation with respect to the instructions is this, your Honor, that Mr. Gerber has some instructions and Mr. Sokol has some instructions and also I have some, and there are others which are going through the typewriter in my office another five or six or seven instructions which I would like to submit when they come over. My secretary will bring them over as soon as they are finished, and we will submit what we have to the Court.

We are trying to get together on the lettering, in accordance with your Honor's instructions last Friday. As soon as we do that we will hand them to the court.

By the Court: Have you gentlemen conferred to see whether you have duplicates?

By Mr. Gerber: We have not had an opportunity to confer yet.

By the Court: Look them over, to that end.

By Mr. Gerber: We would have to sit down, your Honor, and compare each others' instructions.

By the Court: When can you do that?

By Mr. Gerber: We can do it now, if your Honor 967 wishes to give us the time. Mr. Eben hasn't got all his over here. We can get together now, if your Honor wishes.

By the Court: Suppose we go on and you can do it at noontime.

By Mr. Sokol: That is fine.

By the Court: Unless we come to a time where we need them; if we do, we will have to take the time to look at them. Bring in the jury.

By Mr. Downing: Your Honor, there is one correction in the record on page 711 of the record, line 1, shows in connection with the testimony of Bess Osborne: "Now, directing your attention to Government's Exhibit 1"—it should be Government's Exhibit 11.

By the Court: Any objection to the correction?

By Mr. Gerber: No objection.

By Mr. Sokol: No objection.

By Mr. Eben: No objection.

By the Court: Let it be made. Bring in the jury.

(The following proceedings were had in the presence and hearing of the jury:)

By the Court: Does anybody have a transcript of the testimony of Maria Lutwak.

1008 By Mr. Eben: May we have an instruction, your Honor, that the last statement read is limited to the person who made the statement?

By the Court: Yes. That was the statement of whom, Mrs. Treitler?

By Mr. Downing: Mrs. Treitler, your Honor..

By the Court: Ladies and gentlemen, the statement which has just been read, and which appears to have been made by the defendant Regina Treitler, is admissible and is received only against the defendant Treitler. It is not to be considered by you against any other defendants.

By Mr. Downing: Let the record show I am reading from Government's Exhibit 18 in evidence.

1060-1061 At this point, if your Honor please, the Government would like to make a motion, in order to clear the record; that all of the Government's Exhibits, 1 through 28, inclusive, some of which have heretofore been admitted only as against certain defendants, be now admitted against all the defendants, in order that the record may be clear.

By the Court: What are those exhibits?

By Mr. Downing: Exhibit No. 1—

By the Court: Maybe I can go through them quicker.

By Mr. Downing: Yes.

By the Court: Are they in order now?

By Mr. Downing: I believe they are, yes, sir, your Honor.

1062 By the Court: Government's Exhibit 1 may be admitted against all the defendants.

(Said exhibit, so offered and received in evidence, was marked Government's Exhibit 1.)

By the Court: Government's Exhibit 2 may be admitted against all of the defendants.

(Said exhibit, so offered and received in evidence, was marked Government's Exhibit 2.)

By Mr. Eben: I would like the record to show my continuing objection in connection with all of these exhibits.

By Mr. Gerber: The same objection.

By the Court: Very well.

By Mr. Sokol: Same objection.

By the Court: Very well.

Government's Exhibit 3 may be admitted as against all of the defendants.

(Said exhibit, so offered and received in evidence, was marked Government's Exhibit 3.)

By the Court: Government's Exhibit 4 may be admitted against all of the defendants.

(Said exhibit, so offered and received in evidence, was marked Government's Exhibit 4.)

By the Court: Government's Exhibit 5 may be admitted against all of the defendants.

(Said exhibit, so offered and received in evidence, was marked Government's Exhibit 5.)

By the Court: Government's Exhibit 6 may be admitted against all of the defendants.

(Said exhibit, so offered and received in evidence, was marked Government's Exhibit 6.)

By the Court: How many are there on this next one?

By Mr. Downing: I believe on that one there is just one, line 1.

By the Court: Government's Exhibit 7 may be admitted against all of the defendants.

(Said exhibit, so offered and received in evidence, was marked Government's Exhibit 7.)

By the Court: Government's Exhibit 8 may be admitted against all of the defendants.

(Said exhibit, so offered and received in evidence, was marked Government's Exhibit 8.)

By the Court: Government's Exhibit 9 may be admitted against all of the defendants.

(Said exhibit, so offered and received in evidence, was marked Government's Exhibit 9.)

By the Court: Government's Exhibit 10 may be admitted against all of the defendants.

(Said exhibit, so offered and received in evidence, was marked Government's Exhibit 10.)

By the Court: Government's Exhibit 11 may be admitted against all of the defendants.

(Said exhibit, so offered and received in evidence, was marked Government's Exhibit 11.)

By the Court: Government's Exhibit 12 may be admitted against all of the defendants.

(Said exhibit, so offered and received in evidence, was marked Government's Exhibit 12.)

By the Court: Government's Exhibit 19 may be admitted against all of the defendants.

(Said exhibit, so offered and received in evidence, was marked Government's Exhibit 19.)

By the Court: Government's Exhibit 21 may be admitted against all of the defendants.

(Said exhibit, so offered and received in evidence, was marked Government's Exhibit 21.)

By the Court: Government's Exhibit 20 may be admitted against all of the defendants.

(Said exhibit, so offered and received in evidence, was marked Government's Exhibit 20.)

By the Court: Government's Exhibit 22 may be admitted against all of the defendants.

(Said exhibit, so offered and received in evidence, was marked Government's Exhibit 22.)

By the Court: Government's Exhibit 23 may be admitted against all of the defendants.

(Said exhibit so offered and received in evidence, was marked Government's Exhibit 23.)

By the Court: Government's Exhibit 25 may be admitted against all of the defendants.

(Said exhibit, so offered and received in evidence, was marked Government's Exhibit 25.)

By the Court: Government's Exhibit 24 may be admitted against all of the defendants.

(Said exhibit, so offered and received in evidence, was marked Government's Exhibit 24.)

By the Court: Government's Exhibit 28 may be admitted against all of the defendants.

(Said exhibit, so offered and received in evidence, was marked Government's Exhibit 28.)

By the Court: Government's Exhibit 27 may be admitted against all of the defendants.

(Said exhibit, so offered and received in evidence, was marked Government's Exhibit 27.)

1066 By the Court: Government's Exhibit 26 may be admitted.

(Said exhibit, so offered and received in evidence, was marked Government's Exhibit 26.)

By the Court: You may take a short recess, ladies and gentlemen.

(Whereupon the following proceedings were had out of the hearing and presence of the jury:)

By the Court: Government's Exhibit 13 is an examination of Zyginunt Romankiewicz before the Immigrant Inspector on November 24, 1948.

Government's Exhibit 14 is the examination of Zygmunt Romankiewicz before the Immigrant Inspectors on January 4, 1949.

Government's Exhibit 15 is the examination of Marcel Max Lutwak before the Immigrant Inspectors on December 30, 1948.

Government's Exhibit 16 is the examination of Mrs. Regina Treitler before the Immigrant Inspector, December 9, 1948.

Government's Exhibit 17 is the examination of Mrs. Treitler before the Immigrant Inspectors on January 6, 1949.

Government's Exhibit 18 is the examination 1067 of Leopold Knoll before the Immigration Inspectors on December 2, 1948.

Now, I have in mind that the indictment charges that this was a continuing conspiracy and that it was a part of the conspiracy to conceal the facts from the Government, and I have no doubt it was, and it might be and it may be that these exhibits are receivable generally against all of the defendants. But I think I am inclined to the opinion that it would be well to limit these exhibits as they have heretofore been limited by the Court, and that limitation has made them admissible only, and they have been received, as against only the persons who made the statements respectively, and I think it would be well—do you, on behalf of the Government—

By Mr. Downing: We are not going to press the point.

By the Court: On the part of the Government, do you feel strongly they are admissible against all?

By Mr. Downing: Our observation is the same as you have mentioned it, that it is a continuing conspiracy and that it was a part, as is pleaded in the indictment, and as I think the facts prove, a part of this conspiracy to 1068 hide the true existence of the facts, and therefore,

under that theory, I would say that they are admissible against all, because these statements were made—

By the Court: Maybe the defendants want these in.

Is there any defendant who wants the statements of the other defendants to go in? If there is, just speak up.

By Mr. Eben: No, I object.

By Mr. Gerber: No, I object.

By Mr. Eben: I object to the other statements going in against my defendant.

By the Court: Very well. Then they will be admitted—does any counsel feel otherwise?

(No response).

By the Court: I understand that counsel do not desire these to go in. Therefore, they will be admitted against the defendants who made them respectively, and the jury have been heretofore advised to that effect.

(Said exhibits, so offered and received in evidence, were marked, respectively, Government's Exhibits 13, 14, 15, 16, 17 and 18.)

By Mr. Downing: There is one additional factor that I would like to mention at this time, inasmuch as the jury is not here, and there might be some discussion on it.

There has been testimony, of course, of Anne Zapler. You have advised the jury in connection with that.

There is now the testimony of Maria Irene Lutwak, and the Government is moving it be admissible against all the defendants. I think heretofore it has been limited with respect to its receipt.

And there has been testimony by the witness Jane Turner and the witness Mrs. Louis Wickers, which I submit is admissible against all the defendants.

And there is also testimony, I submit, as a part of this conspiracy of Joseph Ludmer and Morris Haberman, which likewise should be admissible against all of the defendants, and I am now moving that their testimony be likewise admitted against all of the defendants except—

By the Court: I want to look at that particularly. I want to look at the parts.

By Mr. Downing: Yes.

By the Court: I think the testimony of Maria Irene Knoll, or Lutwak, whatever her name is, is admissible, generally against all of the defendants.

1070 By Mr. Sokol: If your Honor please, there is no connection between Mrs. Treitler and the witness Maria. The testimony from all the Government witnesses—

By the Court: We have been over this for a week. We must not spend too much time on it now. I think it is admissible and I so rule.

By Mr. Sokol: I would want to record an objection.

By the Court: You record it.

By Mr. Sokol: I would like a chance to convince your Honor otherwise.

By the Court: You have had a week.

By Mr. Sokol: I have not had a chance to argue it at all, but I will renew it later.

By the Court: What is that other witness?

By Mr. Downing: Jane Turner is the witness. I have her testimony here also, your Honor.

By the Court: You spoke of Ludmer.

1071 By Mr. Downing: There is Joseph Ludmer. His testimony is one of those books.

By the Court: I was looking at it. I have no doubt about it being admissible against all the parties who participated in the conversation but I doubt if the conversation was in furtherance of the conspiracy. That has been the ruling before the jury, and I think I will adhere to that.

By Mr. Downing: The testimony of Jane Turner.

By Mr. Eben: She testified she went to the air port and met Grace Knoll and Leopold Knoll when they arrived. There was a conversation at the time they arrived, and she went back to the Governor Clinton Hotel in New York.

That will probably refresh your Honor's recollection on it.

By the Court: Are you about through now, Mr. Downing?

By Mr. Downing: I will rest as soon as these motions are decided, your Honor.

By the Court: You asked for conversation, and the jury was sent out.

By Mr. Downing: No, it was not a conversation.
1072 It was just the actions. I am not interested in the conversation.

I think Mr. Eben mentioned the conversation. I withdrew the question about the conversation. She testified

as to facts concerning Grace Klemtner, and also about Leopold Knoll, Munio Knoll and Marcel Lutwak, in New York.

By the Court: I don't see the limitation. Did I limit it?

By Mr. Downing: I was not sure, and I wanted to make sure, especially the testimony regarding Grace Klemtner, if it was limited, I wanted to make sure that it was in the record admissible against all, as I think it should be.

By the Court: I will admit the testimony of Miss Turner against the defendants generally.

What else is there?

By Mr. Downing: There are two more. Mrs. Wicker, who testified concerning—I think it is in the same book that you have there, your Honor—

By Mr. Eben: It appears to me from examining your Honor's remarks on page 484 that Mrs. Wicker's 1073 testimony has been admitted generally.

By Mr. Downing: It does not specifically.

By the Court: On page 480 Mr. Downing is contending it is admissible against all of the defendants, and on page 481 I asked for the testimony of Anna Zapler.

By Mr. Downing: That is right, your Honor.

By the Court: Then I overruled the objection to the testimony of Wicker. If there is any doubt about it I am ruling that the testimony of Mrs. Nettie Wicker—and who else?

By Mr. Eben: May the record show our objection—I guess on behalf of all counsel?

By the Court: Yes.

By Mr. Downing: The only other witness I refer to is Morris Haberman. Perhaps he should be classified the same as Mr. Ludmer. His testimony concerned certain transactions, certain conversations and certain events that took place, and it was somewhat—

By the Court: I looked at Mr. Ludmer's testimony this morning, and I think my rulings with respect to his testimony were correct and should not be varied at this time.

1074 I think what was said in his presence could hardly—I have spoken about that.

By Mr. Downing: Yes. And Haberman.

By the Court: Where is Haberman's testimony?

By Mr. Downing: It starts in the back of the one you have, and I have the balance of it here.

By the Court: I will read this over at noon time. We will let the jury go until two o'clock.

By Mr. Downing: Then the Government will rest, your Honor, as soon as those rulings are made.

By the Court: All right.

Get your instructions in shape.

By Mr. Eben: The balance of my instructions came over, and we will have them ready for your Honor.

By the Court: All right.

By Mr. Sokol: May I ask a question, your Honor, for our guidance in working on these instructions?

Will your Honor have any objection if we do not weed out some which may be repetitious of others, since 1075 one counsel may one that is more concise, one counsel might take a short form and the other—

By the Court: Take the better one and send it in. Pick out the best ones, that best suit your purpose.

(Thereupon the further trial of the above-entitled case was recess until 2:00 o'clock p.m. of the same day, January 15, 1951.)

1076

• • (Caption—No. 50 CR 464) • •

Chicago, Illinois,
Monday, January 15, 1951
2:00 o'clock p.m.

Met pursuant to recess.

Present:

Mr. Downing

Mr. Owen

Mr. Gerber

Mr. Bartoline

Mr. Sokol

Mr. Eben

Mr. Watt

Mr. Weissbourd

And thereupon the following further proceedings were had herein:

(Whereupon the following proceedings were had out of the presence and hearing of the jury:)

By the Clerk: Case on trial.

By Mr. Eben: May it please the Court, I submit herewith, for your Honor's consideration, requests to instruct which have been marked A to Y, inclusive.

By the Court: I have examined that testimony of 1077 Morris Haberman. I do not think there should be any broadening of the admissibility of the conversations which he testified to. I think that his testimony to the effect that he attended certain restaurants with Mr. Munio Knoll and Mrs. Maria Irene Knoll should be received as against all of the defendants.

By Mr. Downing: Also, your Honor, I submit that there is testimony concerning his visiting the apartment at 3345 West Maypole, at which time he saw Maria Irene Knoll.

By the Court: Yes, I think that is right.

By Mr. Downing: That should be admissible, and also in New York he testified about seeing them in the same hotel room, in New York.

By the Court: I think his testimony with respect to those matters might properly be considered as against all the defendants.

By Mr. Eben: Let the record show my objection on behalf of Leopold Knoll.

By Mr. Gerber: And mine, on behalf of Munio Knoll.

By Mr. Sokol: Similar objection on behalf of defendant Treitler.

By Mr. Bartoline: Objection on the part of Marcel Lutwak.

By Mr. Downing: There is one other thing, that I 1078 am informed by the Reporter, that in connection with

Government's Exhibit 26 this morning, which your Honor, I believe, included in the group that would be admissible against all the defendants, his record did not show your statement that it was admissible against all, but merely that it was admissible, and that is the—

By the Court: It is admissible against all the defendants.

(Said exhibit, so offered and received in evidence, was marked Government's Exhibit 26.)

By Mr. Eben: Same objection on behalf of Leopold Knoll.

By Mr. Gerber: Same objection on behalf of Regina Treitler.

By Mr. Gerber: Same objection.

By Mr. Bartoline: I object on behalf of defendant Marcel Lutwak.

By Mr. Downing: I have no other points, your Honor. As soon as the jury comes in, I presume the Court will advise the Jury, and then the Government will rest.

By the Court: That divorce decree in the case of Marcel M. Lutwak against Maria Irene Lutwak has been 1079 received as against all the defendants.

By Mr. Downing: Yes. All the exhibits, except for the six statements, Government's Exhibits 13 through 18, have been received as against all the defendants, according to the state of the record.

By the Court: I will now advise the jury that the testimony of Maria Irene Knoll or Lutwak is admissible against all of the defendants; that the testimony of June Turner is admissible against all the defendants; that the testimony of Mrs. Nettie Wickers is admissible as against all the defendants; that the testimony of Morris Haberman which in certain respects was limited to Munio Knoll and Marcel Max Lutwak, and in others to Munio Knoll, will in the following respects be received as against all the defendants:

So far as the testimony of Mr. Haberman related to the identification of photographs, it is admissible as against all the defendants; and so far as it related to the presence of Maria Irene Lutwak or Knoll in the apartment with Munio Knoll in Chicago and so far as it related to the presence of Maria in the room of Munio in New York, it will be received generally.

By Mr. Downing: Yes, your Honor.

1080 By the Court: Bring in the jury.

(Whereupon the following proceedings were had in the presence and hearing of the jury:)

By the Court: Ladies and gentlemen, I have heretofore limited the testimony of Maria Irene Knoll or Lutwak as to certain defendants.

I now instruct you that testimony of Maria Irene Knoll or Lutwak is admissible as against all of the defendants.

The testimony of the witness Jane Turner was limited as to certain defendants. I now instruct you that it is admissible as against all the defendants.

The testimony of Nettie Wickers was limited as to certain defendants. I now instruct you that it is admissible as against all of the defendants.

The testimony of Morris Haberman was limited as to certain defendants. I now instruct you that, so far as that testimony related to the identification of photographs, which photographs have been received in evidence, it is admissible as against all of the defendants.

And so far as the testimony of Mr. Haberman re-1081 lated to the presence of Maria Irene in the apartment with Munio Knoll in Chicago or in his hotel room in New York, it is admissible as against all of the defendants.

By Mr. Downing: If your Honor please, the Government rests.

Whereupon the Government rested its case, in chief.

By Mr. Eben: We desire to present certain motions to the Court.

By the Court: You may step into the jury room, ladies and gentlemen.

(Whereupon the following proceedings were had out of the presence and hearing of the jury:)

By Mr. Eben: May it please the Court, I desire to state at this time that I move, under the proper rule, for acquittal of my client Leopold. I do so for three separate reasons:

First, as to the five substantive counts in the indictment, I believe that venue has not been properly proved here, and that an offense, if any, under the testimony, has been proved in New York.

Secondly, with respect not only to the substantive counts but also as to the conspiracy count, the evidence is 1082 insufficient to show that he was connected with this conspiracy. The evidence which is in the record is susceptible of inferences equally consistent with innocence as with guilt, and under such circumstances, your Honor ought to acquit him here at this time.

And, thirdly, with respect to the conspiracy, the evidence shows that there is not one conspiracy been proved here, and not one conspiracy with many objects, but there have been three separate conspiracies, and therefore Leopold Knoll is entitled to be acquitted because there has been a variance in the proof.

I would like to argue those after the others make their motions also.

I should like to say to the Court also, at this time, so

that your Honor will be informed, that it has become the conclusion of counsel for defendants jointly that on the present state of the record, we will not put in any defense, and upon your Honor's ruling on the motions for acquittal, no evidence will be offered on behalf of the defendants.

I thought I ought to inform your Honor of that, because I know you have plans, and so on.

That decision, incidentally, was not reached until 1083 noontime today, although I myself had decided with respect to Leopold Knoll as late as yesterday, but unanimity was not had with respect to it until noon today. Otherwise we would have informed your Honor of it beforehand.

By Mr. Sokol: I am similarly awaiting the argument with respect to the venue. Additionally, I would like to move, on behalf of Regina Treitler for acquittal as to the indictment in toto. Secondly, with respect to counts 2 to 6, I make a motion for judgment of acquittal, because of the venue matter which will be argued hereafter.

Thirdly, with respect to count 6 in particular, singling that count out, as the evidence in the case shows, the witness and person named in the sixth count, that is, her entry, that is, of Maria Lutwak, had entered this country and had filled out the statement, and that there is no evidence in the record which would in any way associate the defendant Treitler with the entry of the witness Marja Lutwak, or of the assertion made upon her entry.

Those are my motions.

By Mr. Gerber: On behalf of Munio Knoll, if the Court please, same motion for judgment of acquittal is made, 1084 first as to counts 2 to 6, the substantive offense, on the same grounds Mr. Eben has stated and will argue; as to the conspiracy and all the counts of the indictment as a whole, we also move for judgment of acquittal on the same grounds as have been urged, without repeating them, by Mr. Eben.

By Mr. Bartoline: On behalf of Marcel Lutwak, I adopt the motions made by counsel here.

* * *

1199 By Mr. Downing: You overrule my motion where I moved to strike out their motion on counts 2, 3, 4, 5 and 6 on the basis that the venue had been waived? I would like to have the record show you have overruled my motion, just for the purpose of the record.

By the Court: No, they made one motion. I will indicate that you have made a motion. Now, I act upon that. Your answer to that is that it was waived. I will say I do not think there has been a waiver, but I do think that the offenses charged and the offenses proven, if they occurred, occurred in a state other than Illinois, namely, the State of New York and occurred either in the Southern or the Eastern District of New York, and that that question has not been waived by the defendant, but it is now contended by the Government that it has been waived. Therefore, what should be the conclusion?

By Mr. Eben: Did your Honor ask what order should be made in the light of what you have suggested?

By the Court: Yes.

By Mr. Eben: It is my opinion that your Honor 1200 should grant the motion for acquittal heretofore made on behalf of the defendants with respect to counts 2 to 6, inclusive, for the reasons stated in the oral opinion which your Honor has just given.

By the Court: I do not think I will acquit them. I think I ought to dismiss counts 2, 3, 4, 5 and 6 because the counts show and the evidence produced shows that if the offenses were committed at all, they were committed in a state other than Illinois, in a District other than the Northern District of Illinois.

By Mr. Downing: Your Honor, may I make this observation, that I would be in favor of a motion to dismiss those counts, that is, if they are making that motion. Naturally, we do not want any order of acquittal.

By the Court: What do you want? What order do you want?

By Mr. Downing: Well, naturally, under your point of view, I think the proper thing would be to dismiss counts 2, 3, 4, 5 and 6. Of course, the Government is opposed to that, but under your point of view, I think that would be the proper procedure in order to save, if possible, any rights that the Government might have, for two 1201 things. First, ability to secure a decision as to these other counts, and secondly, if possible, to subsequently bring the matter within the proper time to the District of New York, if that is possible.

By Mr. Eben: I do not see how your Honor could consistently do that, in view of the reasoning upon which your

Honor has based his decision, namely, the fact that the evidence here shows that the crimes, as alleged in the subsequent counts, were outside of this District. I understand your Honor is not ruling on the indictment, therefore, I think the proper order is the one I suggested to your Honor.

By the Court: I do not think so. I don't know whether it makes any difference at all, or not. Probably time will take care of the situation, but that is not our case. I think the situation just now is like it was if they came in on a motion to dismiss immediately after the arrest because of improper venue. And after I looked over the indictment, probably I would have had to have just as much argument then as I have had now.

Well, what order do you say I should make?

1202 By Mr. Downing: As I say, your Honor, I think the order should be to dismiss counts 2, 3, 4, 5 and 6 on motion of the defendant.

By the Court: What do you say about this? Motion of defendant—what do counsel for defendants say about this? I think this is what it should be. Motion of defendants, counts 2, 3, 4, 5 and 6 dismissed for want of proper venue.

That will be the order unless I hear some further suggestions, which I do not hear.

By Mr. Downing: If your Honor please, in so far as any suggestions which the Government might have, may I reserve such right to submit such suggestions in the morning, after I have had a chance to discuss this matter a little more thoroughly with the office?

By the Court: Yes.

By Mr. Downing: I think there are problems here which I think we are going to pursue, and I just want to have the right to protect our record in that connection.

By the Court: All right.

By Mr. Sokol: Will you excuse us just a moment?

By Mr. Eben: Will your Honor take a brief recess?

By the Court: Yes.

(Recess taken)

1203 By the Court: Here are some instructions, Gentlemen, which have been drafted which I would like to have you look over, and unless you have some objections to them, I propose to give them.

And in here is an instruction to the effect that the jury are not to take into consideration as against the defendant that he did not testify.

If the defendants do not want that instruction, I will not give it; but if they do want such an instruction, I will give it.

Will you gentlemen look these over?

By Mr. Downing: You gentlemen look them over first. When you are through with them, give them to me and I will then look them over.

By Mr. Eben: May we look them over in the court room?

By the Court: Yes.

1204 By Mr. Downing: I think the record does not show rulings with respect to the other motions.

I think there are some motions pertaining to some of the count 1—

By Mr. Eben: Yes. As to Leopold Knoll I had argued insufficiency of the evidence, in advance of the argument—

By the Court: Oh, do you want to talk some more?

By Mr. Eben: No.

By the Court: About anything? What did you want to urge?

By Mr. Eben: I merely want to call your Honor's attention to the fact that there has been no ruling in connection with the argument I made for Leopold Knoll, as to the conspiracy.

By the Court: I think there is evidence to go to the jury as to each and all of the defendants. I have no doubt of it.

By Mr. Gerber: And may the record show, for Munio Knoll I have made a motion for judgment of acquittal, at this time?

By the Court: Yes.

By Mr. Gerber: And I wish to adopt the general grounds Mr. Eben has, to avoid repetition, and also urge the fact that in my opinion if any conspiracy has been
1205 shown, there have been three separate and distinct conspiracies, which would cause a misjoinder of causes in one count, and that would make the count of conspiracy in this indictment invalid; further, that the proof in the case as to Munio Knoll is just as consistent with his innocence as guilt.

Now, that all the evidence has been in, there has not been sufficient evidence in this case to connect him with a conspiracy on his own.

By the Court: That motion will be denied.

By Mr. Bartoline: Let the record show on behalf of Marcel Lutwak I make the same motion.

By Mr. Sokol: And a similar motion for Regina Treitler. I had assumed that motion had been made already.

By the Court: Those motions are overruled and denied.

By Mr. Sokol: Your Honor, if all that remains for us to do is to examine the instructions, might the court adjourn, for the defendants—

By the Court: You gentlemen have all heard those very same things. Look them over quickly. Let's get along. You gentlemen want to get—

By Mr. Sokol: We didn't want to go.

By the Court: You want to try some other lawsuit 1206 before you die. Look those over. You heard those dozens of times.

By Mr. Gerber: Do these include or treat with the ones we suggested?

By the Court: No. I will take up with you the suggestions of the Government, and with the Government the suggestions of the defendants, after you have looked those over.

By Mr. Gerber: All right.

By the Court: The jury can go for the day. Let them go, and come in at ten o'clock in the morning.

Have you been over the instructions I handed you?

By Mr. Gerber: Almost, Judge, but not quite.

By Mr. Downing: I have no objection to those, your Honor.

By Mr. Sokol: Somewhere in the instruction there is an inadvertent reference to Grace Klemtner as a defendant. I know that in the beginning in one of the instructions you said she was not, but later on she is referred to as a defendant. I am sure it was inadvertent on the part of the court.

By the Court: Well, I don't know about that.

"That one Bessie Osborne, Grace Klemtner and Marcel—"

1207 By Mr. Sokol: I don't mean that one. There is a reference later on. I saw it.

By Mr. Gerber: Your Honor, in speaking of Grace Klemtner, calls her a defendant in there.

By the Court: She was. She has been dismissed out.

"Grace Klemtner, alias Grace Klemtner Knoll, is not a defendant in this case and you are to consider count 1 as against the defendants Munio Knoll, alias Zygmunt Romankiewicz, Marcel Max Lutwak, Regina Treitler and Leopold Knoll only."

By Mr. Eben: Yes, but our point is—

By Mr. Sokol: Later on there is a statement made—

By Mr. Eben: I think the jury should not be permitted to know that she had been a defendant in the case.

By the Court: Oh, she was. What does it say? She was a defendant.

"is not a defendant in this case and you are to consider count 1 as against"

so and so only.

By Mr. Sokol: The jury might reasonably draw an inference from it that she had pleaded guilty. They would be searching for some reason why she was not sitting down here.

1208 By the Court: I don't think they will, after having seen and heard her.

I don't see anything wrong with it.

I tell them she is not a defendant in this case.

"and you are to consider count 1 as against the defendants so and so,"

naming the four of them, "only."

I can't take it out. She is in there. They are charged to have conspired with respect to her.

Let's take up the Government's. Which are the Government's?

By Mr. Downing: They are the ones numbered—

By the Court: No. 1 is:

"The essence of the offense of conspiracy is the unlawful combination, confederation, or agreement to commit an offense against the United States. To 'conspire' means to agree, to combine, to confederate."

By Mr. Downing: I withdraw it, in view of the fact that it is in the court's instructions.

By the Court: All right.

By Mr. Downing: I think instruction No. 2, in view of the other instructions that the court has in the suggested instructions, can also be withdrawn.

1209 By the Court: I will hand them back to you.

By Mr. Downing: The same way with instruction

3.

The same way with instruction 4.

By the Court: All right. I hand 3 and 4 back to you.

By Mr. Downing: The same way with 5.

By the Court: All right. I hand 5 back to you.

By Mr. Downing: The same way with 6.

By the Court: All right. I hand 6 back to you.

By Mr. Downing: No. 7 is not in there, but I believe it has been covered, and I am willing to go along with the instructions that the court has suggested. That is from another case. It is another way of saying the same thing, which I believe the court has.

By the Court: Do you withdraw No. 7?

By Mr. Downing: Yes, I withdraw No. 7.

By the Court: Very well.

By Mr. Downing: I believe 8 is in there. I don't recall exactly. If it is, I will withdraw it.

By the Court: I think it is.

By Mr. Eben: It is in there.

By Mr. Downing: Then I will withdraw that.

That is my recollection on 9.

By the Court: It is in.

1210 By Mr. Downing: No. 10 I am not sure of, whether that is in there or not.

By Mr. Gerber: I think it is.

By Mr. Sokol: It is covered.

By Mr. Gerber: I think your Honor covers 10 in another way.

By the Court: No. 10 is:

"If you find beyond a reasonable doubt that there was a conspiracy as described in the first count of this indictment and that any or all of the defendants joined that conspiracy with guilty knowledge that he was joining such a conspiracy or continued in the conspiracy after acquiring such guilty knowledge, and also find beyond a reasonable doubt that any of the overt acts described in the first count of the indictment took place either prior to or during said defendants connection with the conspiracy, then you must find those defendants guilty as charged in the first count of the indictment."

By Mr. Downing: That is in an instruction your Honor gave in the Sylvanus Johnson case.

By the Court: Is there any objection to Government's instruction 10?

1211 By Mr. Eben: Yes.

By the Court: What is the objection?

By Mr. Eben: The objection is, first, I think it is covered in much better fashion in what your Honor submitted to us, and it seems ambiguous in the sense that the jury from this instruction might find if any one of the defendants joined the conspiracy they are all guilty.

By the Court: That would be true. Didn't it say "if there was a conspiracy as described"?

I don't know. I think perhaps that is sufficiently covered by what I have already given you.

Do you insist upon this 10?

By Mr. Downing: Of course, if your Honor decides that it has been sufficiently covered it doesn't do us much good one way or the other if we insist. I am not going to persist in our argument. I submit it. I think it has not been covered, but I will leave that to your Honor's discretion.

Just not to clutter up the record, I will withdraw it if your Honor thinks—

By the Court: Well, let's see.

By Mr. Downing: It has been given by your Honor in the Sylvanus-Johnson case, which involved conspiracy.
1212 acy.

By the Court: In what case?

By Mr. Downing: The case of United States v. Arcadia Insurance Company and Sylvanus-Johnson. It was on trial a year ago this time.

By the Court: Has that case been argued in the Court of Appeals?

By Mr. Downing: No. They are writing the briefs now. I do not think that is any part of the points on appeal. I submit there is as much justification for that instruction here as there was there.

By the Court: I do not believe I will give that.

By Mr. Downing: All right. Then the Government will withdraw it, your Honor.

By the Court: All right.

How about No. 11?

By Mr. Downing: I believe that is in your group of instructions.

By the Court: Do you withdraw 11?

By Mr. Downing: Yes.

By the Court: How about 12?

By Mr. Downing: I believe that is in.

By the Court: I think that is in.

How about 13?

1213 By Mr. Downing: That is a standard instruction.

I believe that is in there too.

By the Court: That is in, I think.

By Mr. Downing: Yes.

By the Court: How about 14? Any objection to 14?

By Mr. Eben: No. No objection.

By the Court: I will give 14.

By Mr. Sokol: Just a moment. It occurs to me that unless 14 were combined with the instruction with respect to proving intent beyond a reasonable doubt, that the jury might infer from No. 14 that they could presume intent when in fact that must be an essential element of the case which the Government has to prove, and it occurs to me that is objectionable from that viewpoint. It would throw off, actually, a responsibility.

By the Court: Oh no, I don't think so. I think 14 is satisfactory. I will give 14.

What about 15?

By Mr. Downing: Are you directing that to—

By the Court: To the defense.

By Mr. Eben: It does not seem to add anything to the instructions one way or the other. We have an instruction there on circumstantial evidence which covers the matter much more adequately than this brief three-line 1214 instruction.

By the Court: Well, I will give that unless I find something better.

How about No. 16?

By Mr. Eben: I object to this one.

By Mr. Sokol: That is not appropriate.

By Mr. Eben: It seems to me that this instruction represents an effort on the part of the Government to move away from vouching for the credibility of witnesses that are put on the stand.

By the Court: I won't give 16.

By Mr. Eben: I think you already have 17 in your instructions, your Honor.

By Mr. Downing: I am not sure it is in that language.

By Mr. Downing: And there are further parts of it that are wrong.

For instance, "the law permits the defendants to testify on their own behalf."

By Mr. Downing: Because of the status of the thing, it should be modified.

By the Court: I think it is sufficiently in there.

How about 18?

By Mr. Eben: I believe you have covered that.

By the Court: I think it is covered.

1215 By Mr. Eben: You have an instruction on demeanor, and so on.

By Mr. Downing: I will withdraw it.

By the Court: All right.

By Mr. Downing: 19 I withdraw. It has no applicability.

By the Court: You don't want 20 in, do you? Or do you?

By Mr. Gerber: No. That is objected to.

By Mr. Downing: I think where people are alleged to have had certain marriages under the circumstances of this case, some definition—

By Mr. Bartoline: We have a definition in there.

By Mr. Downing: I submit this is more appropriate and well founded.

By the Court: I think I will give that.

By Mr. Gerber: It is objected to on the part of Munio Knoll.

By the Court: What is wrong with it?

By Mr. Gerber: I think it is wrong because they undertake to give a definition of marriage which I think is misleading and which is not proper. They say:

"'Marriage' may be defined as the civil status of one man and one woman, capable of contracting, 1216 united by contract and mutual consent for life,"

carrying with it the inference that if people are divorced—

By the Court: You are not going to introduce terms of years in the marital relation, are you?

By Mr. Gerber: They shouldn't either. They say "for life". I think it should be silent.

By the Court: No.

By Mr. Eben: I have the same objection, and there are many other incidents to the marriage relationship which are important in determining whether there is a valid marriage, which are covered in our instruction. I think our instruction covers the whole subject matter in its entirety, and in better fashion than this instruction, and is clearer.

By Mr. Sokol: Probably your Honor will reserve decision on this until you have reviewed ours. We feel ours is more adequate than that presented by the Government.

By Mr. Downing: Naturally, I differ with counsel.

By Mr. Sokol: We assume that.

By Mr. Bartoline: Let the record show that Marcel Lutwak is also objecting.

By Mr. Downing: This is based on the law as set forth in 55 Corpus Juris Secundum, 806.

By Mr. Eben: Yes, but it does not set out all the law that is set out there.

By Mr. Downing: There are other instructions which do set out all the pertinent parts.

By the Court: I will give it unless I am presented with a better one.

What about 21?

By Mr. Eben: I find that objectionable, particularly in the last part of the last sentence. I point to the words:

“to thereafter reside in the United States as man and wife.”

The law does not go that far. Anyone who entered the United States under the War Brides Act, who later got a divorce, even though validly married—

By the Court: I think there had to be an intent to live together until death did them part. They might later have changed their minds.

By Mr. Eben: They had to have the intent when they came in here, your Honor.

By Mr. Sokol: If there were added to this some sentence with respect to intent then of course I believe it could be cured.

By Mr. Gerber: It does not say, “intent,” in the 1218 instruction, Judge.

By Mr. Downing: The point I am making is that—

By the Court: I think that is good. I think I will give that. I will give No. 21.

How about No. 22?

By Mr. Gerber: I object, on behalf of Munio Knoll.

By Mr. Bartoline: I object on behalf of Marcel Lutwak.

By Mr. Sokol: Do we have to keep making objections, if we make a request, if we are asking the court to give another instruction?

By the Court: Most assuredly you do. You are making your record now.

By Mr. Sokol: Very well. I will record an objection for Regina Treitler.

By Mr. Eben: We object to No. 22, if your Honor is up to the point.

By the Court: I am going to stop. We will stop with 21. Take up 22 in the morning.

By Mr. Eben: All right.

By Mr. Downing: Although it may be inappropriate now, I want to mention the Government appreciates the courteous way in which your Honor listened to our side of the argument. I think that we have received very courteous treatment from the court in that respect.

By the Court: I don't know whether you have or not.

By Mr. Downing: I may not agree with you, but I appreciate the opportunity of presenting our side of it.

(Thereupon the further trial of the above-entitled case was adjourned until 10 o'clock a. m. of the following day, January 17, 1951.)

1220

• • (Caption—No. 50 CR 464) • • •

Chicago, Illinois
January 17, 1951,
10:00 o'clock a. m.

Met pursuant to adjournment.

Present:

Mr. Downing

Mr. Owen

Mr. Gerber

Mr. Bartoline

Mr. Sokol

Mr. Eben

Mr. Watt

Mr. Weissbourd

And thereupon the following further proceedings were had herein, out of the presence and hearing of the jury:—

By Mr. Downing: Your Honor, there are two or three things I would like to clear up for the record here.

First of all, the defendants have not rested, as far as the record is concerned. There has been an informal observation by Mr. Eben that they were going to rest, but formally there has been no defendants resting. I would like 1221 to have that in the record before he go on with our instructions.

By Mr. Eben: We rest.

By Mr. Sokol: We rest.

By Mr. Bartoline: We rest.

By Mr. Owen: We rest.

By the Court: Each of the defendants rest.

The Defendants Here Rested Their Case.

By Mr. Downing: As to this matter we were discussing yesterday afternoon and yesterday morning, there is a matter involved in this thing that, just for our own purpose, we are respectfully asking the court about.

You indicated—I am reading from page 1144:

“I do not think, therefore, that the statute which we have considered may permit or properly permit prosecution in this Northern District of Illinois of offenses that were committed in the State of New York or in the Southern District of New York or in the Eastern District of New York.”

There was not any ruling, of course, that the statute was unconstitutional, that is, 164. I do not know what the court's intention was, whether merely to say the statute did not apply here—

1222 By the Court: I don't think the statute, if it were construed to permit the prosecution in this district of offenses such as are set forth in counts 2 to 6, would be constitutional.

But I think it can be construed so as to be constitutional, if it be held to be applicable only to continuing offenses. Then I think it would be valid.

By Mr. Downing: I think that clarifies your thinking then, your Honor, because there was not any wording in there about the distinction. I think that will clarify the record.

As to the type of order, may we suggest, your Honor, that inasmuch as the defendants have made motions for

acquittal as to counts 2, 3, 4, 5 and 6, your Honor deny such motions and that you then dismiss counts 2, 3, 4, 5 and 6 as to each of the defendants mentioned in the respective counts?

I would like to have the record show that you deny their motions for acquittal and then dismiss the counts 2, 3, 4, 5 and 6, for the reasons that you have stated yesterday as to each of the defendants.

By Mr. Eben: I think I ought to have an objection to that, if your Honor would like to hear from us on it.
1223 I think that your Honor's solution of how this matter should be handled yesterday, in which, if I understand the record correctly, you said you would enter an order dismissing counts 2, 3, 4, 5 and 6, on the basis of lack of proper venue, is probably the only type of order that your Honor would want to enter under the circumstances.

By the Court: Well, I said I didn't want to enter a judgment of acquittal on those counts, and that I thought there ought to be an order dismissing for want of proper venue.

Now the Government says: "Well, you ought to deny the motions for acquittal." Well, I suppose I should.

I am not acquitting them. I don't think the question being raised as to proper venue—I think the venue was improper, and that is all I am holding. So I guess I should deny the motions for acquittal. I will deny the motions for acquittal as to each of the defendants.

By Mr. Downing: On counts 2 through 6.

By the Court: On counts 2 through 6. I have already denied it as to count 1.

By Mr. Downing: That is right, your Honor.

And then you enter an order dismissing counts 2
1224 through 6 for lack of proper venue, is that correct?

By the Court: Yes.

I have been looking over these instructions which I handed to you, and I think because of the dismissal of counts 2 through 6 I should insert this, just before I begin with the discussion of count 1:

"The indictment in this case contains six counts. The court has dismissed all of the counts other than the first count. You are completely to disregard counts 2 to 6, inclusive, of the indictment except as

those counts are by the wording of count 1 made a part of count 1."

No, I told you about that. Let's see. There was something else. This is it.

I think this is it. I called your attention to this yesterday, but here is an insert I want to make. It is between (d) and (e).

Then there is a reference in that first count to the other counts. Count 1 stands, and so I think I should put this in:

"The offenses against the United States which it is alleged the defendants conspired to commit, that is, the offenses set forth in counts 2 to 6, inclusive, 225 of the indictment, are, briefly stated, the offenses of obtaining entry into the United States as an alien immigrant by means of false statements and by concealing material facts, and aiding and abetting so to do, and making false statements under oath in applications required by the immigration laws of the United States."

I think that is a correct short statement of what is charged in those counts 2 to 6, and I will insert that, Gentlemen.

By Mr. Downing: I think it is a proper statement, your Honor.

By Mr. Eben: In connection with that, your Honor, we take the position and will at the proper time, we do not think this indictment ought go to the jury, and for several reasons, one of which we referred to yesterday, and that was because of the—

By the Court: Oh, I act upon the assumption that jurors are reasonable folks, and I am going to continue to act on that assumption as long as I am on this bench, and I am going to tell them as clearly as I can that they are to disregard counts 2 to 6, and tell them the indictment in this case contains six counts and the court has dismissed all of the counts other than the first count, and tell them:

1226 "You are completely to disregard counts 2 to 6, inclusive, of the indictment except as those counts are by the wording of count 1 made a part of count 1."

By Mr. Eben: I think in that event your Honor would probably have to define the essential elements of counts 2 to 6.

By the Court: I have read to you what I propose to tell them. The offenses are obtaining entry into the United States as an alien immigrant by means of false statements, by concealing material facts, and aiding and abetting so to do, and making false statements under oath in applications required by the immigration laws of the United States.

If you want any further elaboration of the charges in counts 2 to 6 you just hand them to me.

By Mr. Eben: I follow your Honor.

By the Court: Let's proceed.

By Mr. Eben: We were up to 21.

By Mr. Downing: I believe we were next considering Government's instruction No. 22.

By Mr. Gerber: That is right.

By Mr. Eben: Yes. To which we have an objection.

By the Court: Let me see.

I said I would give 14, 15, 20 and 21.

1227 By Mr. Gerber: Right.

17. By the Court: And I said I would refuse 16 and

By Mr. Downing: That is right, your Honor.

By the Court: Now we are going to consider 22. Do you have 22, gentlemen?

By Mr. Gerber: Yes, we have.

By the Court: Any objection?

By Mr. Gerber: Yes, we object.

By Mr. Eben: Objection is based, first, on the ground there is no evidence in the record upon which to base such instruction in view of the District Attorney's admission in his opening statement there has been a Rabbinical divorce between Maria and Munio Knoll and, secondly, it is contrary to the law, which is that where a second marriage is shown, it is presumed to be valid unless shown otherwise, and the first marriage is held to be dissolved under such a presumption, without some proof on the part of the Government. Therefore the instruction—

By the Court: You know, I held contrary to that here very recently, and the Court of Appeals affirmed me.

By Mr. Watt: Earlier in the case—

By the Court: And that was in a war risk insurance case.

(1228 By Mr. Downing: That is right.

By Mr. Watt: We had two Illinois decisions in court, which we could very easily obtain, which hold very clearly that where two marriages are shown, the second marriage is presumed valid—

By the Court: I acted on the contrary theory and the Court of Appeals affirmed me, and I certainly didn't want to act on that theory in that case. But I had to, as I thought.

By Mr. Eben: There is also the point, and I again state it, so that I am sure your Honor will have it in front of you, that the District Attorney did in his opening statement—

By the Court: I know he stated there had been a Rabbinical divorce, but I don't know what that means.

By Mr. Eben: Well, the burden is on them to show such a divorce is ineffective.

By the Court: No. I think the jury will have to determine what the situation is.

By Mr. Gerber: On the question of law, may I state in fairness to the case, that when that was going on I made it my business to check with the President of the Jewish Theological College here, that trains Rabbis for the Rabbinate, and I asked them about it, and they

1229 checked with certain Rabbis who had been in Poland in 1932 and before; and came in as refugees, and they told me, Judge, that under the laws of Poland a Rabbinical marriage could be performed and it could be valid, and a Rabbinical divorce could be valid under the country.

By the Court: That is not—

By Mr. Gerber: It is not in the record, but I am just saying this, for this purpose, we are left in the dark, and it may very well be that under the laws of this country this divorce is a valid one, and for that reason this instruction would not be right.

By the Court: I will give this instruction. I think it is right.

By Mr. Gerber: Exception.

By Mr. Eben: I object.

By Mr. Sokol: Objection.

By Mr. Bartoline: Objection.

By Mr. Eben: Let the record show an objection on behalf of all defendants.

By the Court: Yes.

By Mr. Eben: That brings us to 23, your Honor, to which we also object.

By Mr. Downing: This is from the Rubenstein case.

By the Court: Well, I think I will give 23. I 1230 think that is all right.

By Mr. Eben: May I state my objection, your Honor?

By the Court: Yes.

By Mr. Eben: This instruction is faulty even though as counsel says, it probably purports to be given under the Rubenstein case, because the Rubenstein case went a little further than what this instruction purports to do.

This instruction is not, in my opinion a good instruction, because, first, it does not consider the question as to a marriage where one assents to the marriage and the other does not. In such event, the marriage is merely voidable and not void, and I believe your Honor should instruct the jury on that.

Our instruction does carry such a provision.

Secondly, the instruction does not consider the question as to whether or not the parties need intend to forthwith assume all the duties and responsibilities of marriage, and the law seems very clear, that a marriage is valid even though they do not intend immediately to assume all such duties and responsibilities.

Thirdly, the instruction is a poor one, in my opinion, because it does not consider the question as to the validity of marriage even though it is immediately repudiated 1231 and the law is also clear that a valid marriage may be entered into and immediately repudiated. Nevertheless, the marriage itself is valid.

Finally, it fails to bring to the attention of the jury the fact that a marriage which is entered into for an ulterior motive or for material gain might still be a valid marriage, if the other prerequisites are present.

I say the instruction is faulty on all four of those counts, and I object to it on behalf of all defendants.

By the Court: I think this correctly states the law. If there is any other law that ought to be given you can call my attention to it. I will give 23.

1232 By the Court: No. 24:

"In order to constitute a valid marriage, the essentials common to all contracts, capacity and consent must be present. In this connection, mere words without any corresponding intention will not create the marriage relation, and that notwithstanding though formalities indicating consent"—

By Mr. Downing: I think that word "though" should be taken out. I think the word "though" is redundant in there, and I think it should be out of there.

By Mr. Eben: It seems to be somewhat repetitious of matters they have in instruction 23. In any event, it is subject to the same objections stated in connection with instruction 23.

Mr. Downing: I think that the word "though" can be eliminated from the fifth line.

By the Court: This punctuation does not seem to be right, either.

By Mr. Downing: I think in the first sentence the punctuation is all right. In the second sentence, if we eliminate the word "though", in that fifth line.

—"notwithstanding the formalities indicating consent have been complied with there is no valid

1233 marriage where the parties do not intend to enter into the marriage relation."

I think that is what caused the problem. I mean, it was a problem when I first looked at it.

By the Court: How about the word "that", in the fourth line?

By Mr. Downing: That could be eliminated, right before the word "notwithstanding".—"notwithstanding the formalities indicating consent have been complied with." Those two words can be eliminated, and make it, I think, clear.

By the Court:—"notwithstanding the formalities indicating consent have been complied with, there is no valid marriage where the parties do not intend to enter into the marriage relation."

I will give it in that form, striking out the words "that" and "though". That is No. 24.

By Mr. Eben: Objection on behalf of all defendants.

By Mr. Downing: 25 should be withdrawn, your Honor.

By the Court: Very well. Any objection to No. 26?

By Mr. Eben: Yes, there is, your Honor. It seems to me the language in the fourth line of that instruction is objectionable in that it calls the jury's attention only to the task as being directed towards finding the defendant guilty. As I understand it, they also have a task to determine whether they are guilty or innocent, and I would suggest if your Honor does give the instruction, that those words be included at that particular point. It should be their only task, is to determine whether they or any of them are guilty or innocent as charged.

The same objection would go to the next to the last line starting "It bears on the question of guilt of the defendant." I think the words "or innocent" should be included there.

Thirdly, the third sentence starting, "You have no concern with the guilt of any person or persons not named in the indictment, and not defendants in the trial", seems to be objectionable because on the basis, if your Honor sends the indictment to the jury, on the basis of this instruction which you prepared and showed to us yesterday, Grace Klemtner is shown with other defendants, and is named as a defendant in the indictment still, and it is quite possible that the jury will go off and start conjecturing as to her guilt.

By the Court: That is why I am telling them not to pay any attention to that.

By Mr. Eben: That same objection to the last part of which I just stated also appears three lines later, 1235 which starts "or guilt of any person or persons not named in the indictment."

By the Court: "Or not on trial before you." I think that word "and" ought to be "or".

By Mr. Downing: Yes, it should be.

By the Court: I think, modified in this respect, the instruction would be all right:

"The sole question before you is whether the defendants named in the indictment are guilty as charged.

"Your only task is to determine whether they or any of them are guilty, or not guilty," inserted. "You have no concern with the guilt of any persons not named in the indictment and not before you"—

I think that ought to be "or".

—“or any defendants in the trial which has just drawn to a close in the evidence or any circumstances surrounding the presentation pointing to the guilt of any person or persons not named in the indictment or not on trial before you. You are in no sense to consider such evidence or such circumstances except that
1236 it bears upon the question of the guilt or innocence of the defendants or some of them.”

I think I will give it, as modified.

1237 I will have it recopied.

By Mr. Eben: While your Honor is having that done, I would like to clarify our objection on the record, which I make on behalf of all of the defendants, to allowing the jury in any way to consider that Grace Klemtner is a defendant in this case, or allowing the indictment to go to the jury with any mention of her as a defendant in the case because, as your Honor knows, she is not a defendant. She has been dismissed out, and I fear that the jury may, in looking at the indictment, draw some inferences from the fact that she is so named, and I do not think they should be permitted to do so.

By the Court: No, no.

By Mr. Eben: My suggestion is, may it please the Court, that the indictment, if it goes to the jury, that her name should be deleted.

By the Court: No, no. I won't do that. I am not going to modify the indictment. I have dismissed her out of the case; and I dismissed counts 2 to 6, rightfully, I think, but I am not going to mutilate the indictment. And I want to continue to think that jury men and women are rational human beings. If anybody else wants to consider them otherwise, that is just their responsibility. If you feel they are not rational, I cannot help it. I think they are.

1238 By Mr. Eben: It is because that I feel they are rational human beings that I think they will say that Grace Klemtner is still a defendant in this case.

By the Court: I will tell them that she is not. The instructions are going to the jury.

Now then, I am giving 14, 15, 20, 21, 22, 23, and 24. There is one other. What is that number?

By Mr. Downing: 26, your Honor.

By the Court: That the Government submitted.

Now then let us take up the defendants, No. A. Any objection to A?

By Mr. Downing: I think it is covered in your instructions already, your Honor. I do not see any sense in repeating it.

By the Court: I think I will give A.

By Mr. Downing: I think B is already given.

By the Court: I will give it so that there won't be any doubt about it.

By Mr. Downing: I certainly object to No. C.

By the Court: Oh, I will give C.

How about D?

By Mr. Eben: Excuse me, your Honor. In connection with C, there seems to be one error in the last sentence. The last word, I think, to make good grammar, should read "himself".

1239 By the Court: Shall I change it with a pen?

By Mr. Eben: Oh, certainly, by all means.

By Mr. Sokol: Excuse me. If you are going to change "himself", you must this—

By the Court: With himself. I will give it as modified.

By Mr. Downing: As to No. D, your Honor, this one has been covered as a general instruction, and I do not see any reason to repeat it.

By the Court: I think I have fully covered that. Don't you think I have?

By Mr. Downing: It is fully covered in your standard instruction.

By the Court: Don't you think that I have covered it?

By Mr. Sokol: I think so. I don't think Mr. Eben heard you.

By the Court: Don't you think that I have covered that?

By Mr. Eben: Yes, sir, I think that you have covered it. We will withdraw it.

By the Court: How about E?

By Mr. Downing: I think that has been covered.

By Mr. Sokol: That is withdrawn.

By the Court: How about F?

1240 By Mr. Downing: I think that too is covered, your Honor.

By Mr. Eben: Yes, it has been covered.

By the Court: You are withdrawing F. How about G?

By Mr. Downing: I think that that is covered.

By Mr. Eben: No, I would say it is not.

By Mr. Sokol: No, that has not been covered.

By Mr. Downing: Well, I object to the wording here, I mean the law as to reasonable doubt.

By the Court: No, I do not see any harm in it. I will give G.

By Mr. Downing: H, you have an instruction as to reasonable doubt.

By Mr. Sokol: We will withdraw that.

By the Court: H is withdrawn. How about I?

By Mr. Eben: There is nothing in your instruction about that. This had to do with reading of newspapers and so on.

By the Court: I think I will give I.

By Mr. Downing: May I make this observation?

By the Court: Yes.

By Mr. Downing: With respect to the last two sentences, beginning especially after the words "United 1241 States", I question the propriety, on the face of the instruction—up to that point, I have no particular quarrel with the instruction, but I do not see any sense in the terminology thereafter used, except for the last sentence.

By the Court: Oh, well, I don't know.

By Mr. Downing: I don't have any objection to the last sentence.

By Mr. Eben: Government counsel is contending that he must be considered in a different light.

By the Court: No, I think it is all right.

By Mr. Eben: This is not covered. I am now referring to the requested instruction J. It is not covered in your Honor's instruction.

By Mr. Downing: Well, parts of its have been covered. I think they have got included in here one sentence. There may be some merit to his statement; but I think in substance—

By the Court: I think I will give that. I think it is covered but I will give it.

K?

By Mr. Eben: That has to do with intent?

By Mr. Downing: Well, there again, I think that this is covered in your instruction.

By the Court: Oh, I think I will give K.

1242 By Mr. Downing: It is specifically objected to. I do not see any propriety in singling out any one individual and tendering a separate instruction.

1243 By Mr. Sokol: The reason was tendered, Regina Treitler is not a party to any marriage, and I insist upon an instruction, not naming Regina Treitler specifically, but I think if the Court is going to give an instruction with respect to the parties to a marriage—

By the Court: I do not want to pick out a defendant like that.

By Mr. Sokol: I am not suggesting that she be named, but I think it is important to distinguish between parties. You are going to give an instruction with respect to the parties to a marriage, and she is not a party to a marriage.

By the Court: I will give the first lines of it, if you want that much of it. I won't give the remainder of it.

By Mr. Downing: I have no objection to the first five lines, but the balance of it, I still think is objectionable.

By the Court: No, I am not going to pick out any of the defendants.

By Mr. Sokol: Let me ask this of your Honor. The defendant Treitler has a right to have her guilt or innocence determined, as to her intent.

By the Court: Well, there is no use spending all
1244 the rest of the court year in this case. I will give the first five lines. I won't give the other five. If you want the first give you may have them.

By Mr. Sokol: The first five are already covered by the Court.

By the Court: You don't want them?

By Mr. Sokol: No, I want the last part.

By the Court: The record may show I am willing to give the first five lines. You object to the last five?

By Mr. Downing: The Government objects to the last five, your Honor.

By the Court: Very well. I will refuse them.

By Mr. Eben: The next instruction has to do with piling presumptions on presumptions.

By Mr. Downing: I think, in effect, that has been covered.

By the Court: What is that?

By Mr. Downing: M.

By Mr. Eben: We will withdraw that.

By the Court: You are withdrawing M?

By Mr. Eben: Yes, sir.

By Mr. Downing: The Government objects to instruction N.

By Mr. Eben: That is not covered in any instruction, 1245 guilt by association.

By Mr. Downing: I think it is covered in the conspiracy instruction which the Court has already indicated he will give. I do not think that this will—

By Mr. Eben: Mere association without something else does not make a party guilty of a conspiracy.

By Mr. Sokol: I believe the Deray case—there is a case that has exclusively passed on that.

By the Court: I will give N.

By Mr. Eben: Your Honor has an instruction on this one?

By the Court: Which one, O?

By Mr. Eben: On O. You asked us if we wanted the last instruction given. If I may have just a second with my associates to determine that, we will inform your Honor.

We would like to have ours on that.

By Mr. Downing: I think the Court's instruction is better.

By Mr. Eben: We would like to have instruction O given, your Honor.

By Mr. Downing: I think the one the Court has is a standard instruction. It has been used around here for a long time, and it has been approved.

1246 By the Court: I think what I say is sufficient. I will refuse O as covered.

By Mr. Downing: The Government submits, with respect to P, that this is covered in the Court's instruction.

By Mr. Eben: I don't think it is, your Honor. There is no mention of circumstantial evidence at all.

By Mr. Downing: That is my recollection. I may be hazy on it.

By the Court: No, I do not think there is anything about circumstantial evidence.

By Mr. Downing: Well, apparently I was thinking of some other case. I think that this instruction of the Court, the standard instruction which you have given numerous times on circumstantial evidence, I think more clearly states the proposition than does this instruction.

By Mr. Eben: This happens to be Judge Medina's instruction, copied verbatim, given in the communist case in New York.

By Mr. Downing: Judge Barnes has given an instruction on this for a long time, and I submit it is a better type of instruction.

By the Court: Well, he mixes up circumstantial evidence with—

1247 By Mr. Downing: I do not think this is as clear as the instruction you normally give. I did not submit one because I think your standard instruction usually covered it.

By the Court: Can you find the instruction on circumstantial evidence which I ordinarily give, please? We will put P aside for a moment.

1248 By Mr. Eben: Instruction lettered Q is our instruction on marriage.

By Mr. Downing: I submit it has already been covered by the other instruction.

By Mr. Eben: The only trouble with the Government instruction is that it is blanket which only comes up to the knees, and in this case it should come up to the chin. We allude in our instruction to many matters—

By the Court: I think it ought to come up over the head.

By Mr. Gerber: That is right, Judge; it should.

By Mr. Downing: I think the Government's instruction covers the head as well as the knees.

By Mr. Gerber: Not quite.

By the Court: Here was an instruction given in a case which has been about as thoroughly reviewed as any case has ever been in my knowledge:

"There are two kinds of evidence, direct and circumstantial. Direct evidence is that sort of evidence by which a fact is proved directly and without inference from other facts, and is usually given by witnesses who saw, hear or otherwise observed some particular fact or occurrence. Circumstantial evidence is that sort of evidence by which an inference of an unknown fact is drawn from the existence of known facts. For example, if when you went to bed at night you saw the ground was bare of snow, and in the morning when you awakened you saw the ground covered with snow, while you had

not seen the snow fall nevertheless you can infer from the evidence you see that it snowed during the night. That is an illustration of what circumstantial evidence is.

"Circumstantial evidence in criminal cases is the proof of such facts and circumstances connected with or surrounding the commission of the crime charged as tend to show the guilt or innocence of the party charged. If the facts and circumstances shown by the evidence in this case are sufficient to convince the jury of the guilt of the defendants or any of them beyond a reasonable doubt then such evidence is sufficient to authorize the jury to find the defendant or defendants guilty. The law demands a conviction where there is sufficient legal evidence to show a defendant's guilt beyond a reasonable doubt, and circumstantial evidence is legal evidence."

1250 By Mr. Downing: If your Honor please—

By the Court: Somehow or other, I think that is a clearer instruction than Judge Medina's.

By Mr. Downing: It has been approved also by this Circuit.

By the Court: It has been approved by the Supreme Court expressly.

By Mr. Eben: It strikes me, however, that the balance in any event should be given and that is, since from circumstantial evidence you draw inferences, the jury should be told that if the inference they draw is as consistent with the theory of innocence as with guilt they should adopt the former.

By the Court: That is a different question. That is not circumstantial evidence.

"The guilt of an accused is not to be inferred because the facts proven are consistent with his guilt, but on the contrary before there can be a verdict of guilty you must believe from all the evidence and beyond a reasonable doubt that the facts proved are inconsistent with his innocence. If two conclusions can reasonably be drawn from the evidence, one with innocence and one with guilt, you should adopt the former."

1251 That is one proposition of law. Circumstantial evidence is an altogether different thing.

By Mr. Eben: That would cover both circumstantial and direct.

By the Court: I think I will give the instruction on circumstantial evidence which I have just read to you.

I will refuse P because it is all covered.

What do you say about Q?

By Mr. Downing: The Government submits that Q is covered by Government's instructions 20, 22, 23 and 24. Certain provisions of this thing are contrary to the law in the Rubenstein case, which is the basis of Government's instruction 23. It is a conglomeration of different aspects, and I think it has all been covered.

Using counsel's analogy, I think it is covered from head to toe in the four Government instructions which the court indicated its intent to give.

By Mr. Eben: Virtually everything, your Honor, starting from about the second paragraph on is not covered by the Government's instruction.

By the Court: I have a little doubt about one or two parts of it. However, I think I will give it.

1252 By Mr. Downing: In addition to what--

By the Court? Yes.

By Mr. Downing: All right.

By the Court: What is this, Q?

By Mr. Downing: Yes, that is Q.

By the Court: What about R?

By Mr. Downing: I think that has been covered in Government's instruction 12, which I withdrew because it had already been covered in the court's instructions.

By Mr. Eben: If it is covered in the court's instructions there is no disposition on our part to state it in different language.

By Mr. Sokol: No. 12 is not covered. While it is suggested, it does not indicate to the jury that the basis upon which they would disregard such testimony--

By Mr. Downing: I did not mean to infer that Government's instruction 12 was given. I said one like it was given in the court's instructions.

By Mr. Sokol: If the court's instruction cover the question of disregarding the testimony and the question of innocence depending upon such testimony, we would withdraw it. But if it doesn't, then we would want R.

By the Court: I think that goes farther than the law permits.

1253 By Mr. Sokol: I took it from some of the instructions Judge Woodward used to give.

By the Court: Yes. He was a good lawyer, but everything he did wasn't right. Maybe counsel misled him.

By Mr. Sokol: I merely want to indicate to the court it was not in vengeance.

By the Court: Well, I think if I were in your place I would disclaim authorship of that. I don't think it is a good instruction.

By Mr. Sokol: It is tendered because of the fact that there were two witnesses each of whom testified with respect to business transactions with one and not other of the defendants.

By the Court: If you tender an instruction that if any witness or witnesses showed bias by their demeanor or testimony on the stand and showed bias or prejudice against one or more of the defendants, that fact, if it be a fact, may be taken into consideration in determining the truth or falsity of what the witness said—I would give it. But you mix it all up.

If you bring me such an instruction as I have indicated, I will give it to you.

By Mr. Sokol: I believe the next one partly covers that, S.

1254 By Mr. Downing: I submit S is in your standard instruction. Of course, there is no basis for this instruction. This instruction is without any foundation.

1255 By the Court: What basis is there for "has received or hopes to receive"?

By Mr. Sokol: The fact that there was testimony by a woman who is an admitted accomplice by her testimony—she makes certain assertions and you have her participation, about which she has testified. It is a serious question as to whether or not the fact that she was—the Court calls attention to the fact that some people are not named in the indictment. There is a serious question as to whether or not that should not be considered.

By Mr. Downing: That would be covered in the type of instruction your Honor suggested to counsel. But this type of instruction, I think, has no basic foundation in fact, or otherwise.

By the Court: "You are the sole judges of the credibility and weight to be given to the testimony of witnesses who have testified in this trial. In weighing the

testimony of each witness, you should carefully scrutinize the same, consider all the circumstances under which the witness testified, his demeanor on the stand, the relation which he bears to the Government or the defendant, the manner in which he might be affected by the verdict, 1256 the extent to which he is corroborated or contradicted by other credible evidence, in short, any circumstance that tends to throw light upon his credibility. Applying these tests which I have stated, it is for you to determine the weight which is to be given the testimony of each witness."

By Mr. Downing: That covers this situation.

By Mr. Gerber: No, it does not.

By Mr. Sokol: It does not go that far.

By Mr. Downing: There is no basis for going farther.

By Mr. Sokol: I submit that the presence of the witness Bess Osborne on the stand does. You differ.

By the Court: What does this mean?

"Weighing and considering his credibility, the credibility of the witness, the jury should consider whether any witness has been interested."

What does "interested" mean?

"Has received or hopes to receive any reward, immunity or benefit from the prosecution of the case."

I can see that. But "interested"—

By Mr. Gerber: We can take out the "interested". You have covered that.

By Mr. Sokol: If you strike out the word "interested", I don't have any—

By the Court:—"or in any other manner become interested". Interested in what?

By Mr. Downing: There it comes back again.

By the Court:—"or has had his feelings or passions enlisted against the defendant."

There is no evidence of that.

By Mr. Downing: That is right.

By Mr. Sokol: I think the witness Ludmer is a good indication of that.

By Mr. Gerber: There can be an inference of that by the jury, your Honor.

By Mr. Downing: The next wording, "If the jury should find such witness has sustained or does sustain such relation"—I don't think the jury would know what that wording means.

By the Court: If you have a copy of that, I will see if I can modify it. Have you a copy you can hand me?

By Mr. Sokol: Yes. Do you want it?

By the Court: Yes.

—“in weighing and considering the credibility of the witness, the jury should consider whether the”—
1258 —“has received or hopes to receive any reward, immunity, or benefit”—

—“reward or immunity or benefit from the prosecution of the case.”

By Mr. Downing: There is no basis for the use of the word “benefit”, your Honor.

By Mr. Sokol: I think there could be. The personal gratification of a malicious person, that such a person might find in seeing people found guilty, does I think, warrant the presence in that instruction of that word.

By Mr. Downing: But the jurors will wonder what the use of the word “benefit” there means.

By Mr. Gerber: “Reward” is synonymous with it.

By Mr. Downing: Then strike out the word “benefit”.

By the Court: —“has received any reward or immunity or benefit from the prosecution of the case, or has in any other way become interested.”

That is just getting way out in thin air. I don't know what it means.

—“or has had his or her feelings or passions enlisted against the defendants or any of them.”

—“and if the jury should find any such witness has
1259 sustained or does sustain such relation to the case as would naturally tend to interest him”—

That I just cannot see.

By Mr. Sokol: I did not draw that. It would be agreeable to me to strike the word “naturally”.

By the Court: This is a job to try to fix this up.

By Mr. Sokol: I think if the Court struck the word “naturally”, the rest would be all right.

By the Court: —“interest him or her.” Mere interest in the case does not disqualify them.

I will refuse that unless you can fix it up. I cannot fix it up.

By Mr. Sokol: I did not draw it, if your Honor please, but I would like to fix it up and I would like the Court to give it in some way.

By the Court: If you want to rewrite R and S, I will consider them. But I will refuse them unless you make some modification in them.

T: "Certain statements allegedly made by the defendants in this case have been received in evidence and read to you in whole or in part. You are instructed that you are not to consider in your deliberations that these statements were made in furtherance of the alleged conspiracy 1260 charged in the indictment. They are, therefore, not to be considered by you as proof of participation of any defendant in any alleged conspiracy other than the defendant who allegedly gave the statement.

I think this would be proper.

"Certain statements allegedly made by the defendants in this case have been received in evidence and read to you in whole or in part. You are instructed that said statements have been received only against the persons who made them and are not to be considered by you as proof of the participation in the conspiracy of any defendant other than the defendant who made the statement."

I think that would be all right.

By Mr. Downing: I have no objection to that.

By Mr. Gerber: I agree that is a proper statement.

By the Court: I will modify that statement, and, as so modified, give it.

"U".

By Mr. Downing: As to the first part, I submit you have already instructed them in your general instructions 1261 concerning the law about this matter.

As to the second part of it, you are, I think, telling the jury what is a question of fact. It is up to them to decide on the facts. It is a question of evidence about whether they were honorably discharged.

By the Court: I think that is an undisputed fact. I think that is all right. I will give U.

1262 By Mr. Downing: This again singles out—

By the Court: I will refuse V.

By Mr. Eben: That seems to be a duplicate, doesn't it?

By the Court: I will refuse V. I will refuse W.

By Mr. Gerber: May I be heard on that for a moment?

By the Court: Go ahead.

By Mr. Gerber: There is evidence that has been developed, your Honor, that at the time Munio Knoll signed his

statement for application for admission he could neither read, write nor understand English. The immigration inspector who officiated was not here, and I could not examine him as to whether he read it to him. Bess did not recall whether it was read to him or not before he signed it.

By the Court: Well, I will refuse it.

By Mr. Downing: As to the next one, of course, there was one witness called by the court which of course I did not submit an instruction on. But if the court considers this instruction I submit something should be incorporated therein about one of the witnesses being a court's witness.

By Mr. Eben: The instruction says:

"The Government by calling witnesses—"

1263 The court's witness was called by the court and not by the Government.

By Mr. Downing: But does the jury know that? It is a subtle way of trying to imply merely Grace Klemtner was put on as part of the Government's case, that thereby she is a government witness.

By the Court: I will give this but, in view of Mr. Downing's objection, if I give it, I will say:

"All of the witnesses in this case were called by the Government other than Grace Klemtner, who was called by the court."

By Mr. Downing: That is all right.

By Mr. Sokol: You gave me back S, your Honor. Would you be satisfied with this? What I have done is to strike out half of S. Do you have S before you?

By the Court: Yes.

By Mr. Sokol: As the court originally corrected the first sentence, it would be acceptable to me, and I would strike out then those words which followed.

By the Court: Let's see it.

By Mr. Sokol: I have been writing on this. I would end with "them or any of them."

In other words, only half of the instruction would be given.

By the Court: Yes, I will give it as modified.

1264 By Mr. Sokol: Fine.

By Mr. Downing: May I take a look at it? I have not seen the modification.

Do you want this to be rewritten or typed up?

By Mr. Sokol: Judge Barnes has the original.

By the Court: What is this, S?

By Mr. Downing: Yes.

By Mr. Sokol: Yes, that is S, your Honor.

By Mr. Downing: May I respectfully call your attention back to X?

In the last sentence there it says:

"By this I mean that the Government assumes responsibility for the statements made by such witnesses."

In view of the change that we have talked about I presume the court will modify that—"such witnesses as called by the Government."

By Mr. Sokol: Or you can use the words "these witnesses," referring to the Government witnesses.

By Mr. Downing: When you refer to two classifications of witnesses then you get into a little ambiguity as to just whom you mean, unless you spell it out.

By Mr. Bartoline: The court indicated on several 1265 occasions he believes the jurors to be reasonable persons.

By Mr. Downing: I do not dispute that fact. But, on the other hand, we have a distinction of witnesses here.

By The Court: What do you say?

By Mr. Downing: I say that this last sentence here in this instruction should be modified, like we discussed, which the court indicated its willingness to do.

"By this I mean the Government assumes responsibility for such witnesses."

If in the first sentence it is modified, then—

By the Court: I will put this down at the end.

By Mr. Downing: That is all right then.

By the Court: What about Y?

By Mr. Downing: Y again I think is covered. I do not see any necessity of spelling out any one witness. It is covered by other instructions, general instructions as to all witnesses.

By Mr. Eben: She was the only accomplice, if I recall.

By the Court: I do not think that properly sets out an instruction for accomplice witnesses.

By Mr. Sokol: Perhaps the Government will want to 1266 tender its own then.

By Mr. Eben: Of course Grace Klemtner falls in the same category.

As to characterization, I think she should also be included.

By Mr. Sokol: No. Bess Osborne is an admitted accomplice, and Grace Klemtner denies it, and the jury will determine that. That is not something to be determined here.

By the Court: I think Mania Knoll, Bess Osborne and Grace Klemtner were in exactly the same boat.

By Mr. Downing: That is right, your Honor.

By the Court: S reads:

"In weighing the testimony of each witness you should carefully scrutinize the same,"—

and

"The jury should consider whether the witness will receive or hopes to receive any reward or immunity or benefit from the prosecution of this case, or has had his or her feelings or passions enlisted against the defendants or any of them."

Is that the instruction you request me to give?

1267 By Mr. Sokol:

By the Court: I will give an accomplice instruction.

"If you find from the evidence that any witness was an accomplice in the sense that she participated in the alleged crime charged in the indictment, then I instruct you that her testimony is liable to grave suspicion and you should act upon such testimony with great care and caution and subject it to careful examination in the light of all the other evidence in the case, and you should consider the influence under which such testimony is given and whether the purpose of the witness was to obtain some benefit to herself or to gratify her malice."

By Mr. Gerber: That is all right.

By Mr. Downing: Couldn't you also say:

"or to voluntarily tell the truth"?

They are all three possibilities, one as much as the other, equally.

By the Court: Well, I will modify this, and then having modified it, will give it.

"If you find from the evidence"

I will say,

1268 "any witness was an accomplice in the same sense that she participated in the alleged crime charged in the indictment, then I instruct you that her testimony is liable to grave suspicion."

"If you find from the evidence that any witness was an accomplice"—

I will give it that way. As modified, I will give it.

By Mr. Downing: How about the addition of what I suggested, which I submit is just as much something to be considered by the jury as these other two matters that they have added: "some benefit to herself, or to gratify her malice"?

It is just as likely a witness has a desire to tell the truth.

By the Court: I don't think that is ordinarily put in the accomplice instruction. So I will just give it this way.

By Mr. Eben: I have one other very short instruction of six lines. We have marked it Request Z, which I would like the court to consider and ask you give such an instruction. I have already given a copy of it to the District Attorney.

1269. By the Court: I think we have instructions that cover that.

By Mr. Downing: It is covered.

By Mr. Eben: Not precisely. This particular instruction makes mere knowledge not enough to put a person into a conspiracy, or even approval of it. We have one instruction that has to do with association or relation, which is on the same point, but it does not go so far as to state anything having to do with knowledge, acquiescence or approval.

By Mr. Downing: If your Honor please, I submit that your conspiracy instructions which you have there, in the group of instructions, cover the matter, and this is superfluous.

By the Court: I will give Z.

By Mr. Eben: That is all we have now, your Honor. I understand you are going to modify Y or rewrite Y.

By the Court: Yes, and I will rewrite X, too and I am going to rewrite T. Now, having modified that one, S, you don't want R, do you?

By Mr. Sokol: I will withdraw R.

By the Court: Now, as to X on "All the witnesses in this case were called by the Government other than the witness Grace Klemtnr, who was called by the Court
1270 as a Court's witness."

Add that to X, if you please.

By Mr. Downing: If your Honor please, may I suggest that leaves us in the same place I was complaining about, if that is going to be the first sentence.

By the Court: It is not the first. It is added at the end.

By Mr. Downing: I just wanted to be sure.

By the Court: I am going to modify T.

Now, have you gentlemen revised your estimates as to how much time you want to talk? I suppose you want to divide your time.

By Mr. Gerber: Your Honor, I think we can use about two hours for all of us for the defense, not to exceed two hours.

By the Court: I would like to go out now and be back here at 1:30.

By Mr. Eben: That is all right. I don't want to be bound by any two hours. I said an hour per counsel, and at that time I told you Honor—if I didn't, I intended to—that I doubted extremely whether I would go that far. Your Honor pointed out to me, impliedly, that if we did, we were darn fools.

By the Court: Now, can you gentlemen put your 1271 heads together and tell me how much time you want in the aggregate, because I want to know what to tell the Government?

By Mr. Eben: If we may have two hours and a half.

Now, then, Mr. Downing, you may have not to exceed two hours and a half. I am holding these gentlemen to two hours and a half. I want you to make a fair opening.

By Mr. Downing: Sure, your Honor.

By the Court: And I use these words, "fair opening", in a technical sense.

By Mr. Downing: I understand.

By the Court: Now, how many verdicts are there? There is one where they find them all not guilty and then all guilty. Now, does it occur to anybody that this is improper, one verdict where the jury finds the defendants, all of them named, not guilty, as charged in count one of the indictment?

And, "We, the jury, find the defendants guilty as charged in count one of the indictment."

There are two forms of verdict.

Then a form as to each defendant, finding each defendant not guilty, that is, for each of the four defendants, 1272 and a guilty form as to each defendant. That is ten forms of verdict. Does it occur to anybody that is not enough?

By Mr. Gerber: Should it be referred to as count one now, as there is only one count in the indictment?

By the Court: Now, tell me, is there anything else you want?

By Mr. Eben: No, I see nothing wrong with that.

By Mr. Gerber: I just thought that since there is only one count in the indictment, why not say guilty or not guilty, as charged in the indictment?

By the Court: What is the difference?

By Mr. Gerber: I am not going to make a point of it.

By the Court: It is written up and I don't want to change it. I understand these are all right, then, Mr. Clerk.

By Mr. Eben: I am wondering, without urging on the Court, what your Honor's disposition would be to a special verdict in which the jury might find—

By the Court: No, I don't want to do that.

By Mr. Eben: I am pointing out in the record I am not making any point of it.

By the Court: I don't know what they would find as to the ultimate fact, did they conspire? Two ultimate 1273 facts. The forms of verdict I am submitting, the ten forms of verdict, cover that.

Now, I will give K, as modified.

Now, as to certain statements allegedly made by the defendants in this case having been received in evidence, I am going to tell them that they are admissible only as against the defendants who made them.

Come back at 1:30, gentlemen.

Now, have the jury come in here.

(The following proceedings were had in the presence and hearing of the jury.)

By the Court: Ladies and gentlemen, I am going to ask you to return at 1:30 today. That is one-half hour earlier than usual. The reason for that is that counsel will then address you in final argument in this case, at 1:30. I am going to ask you to be here promptly, please, at 1:30. In the meantime, remember what I have told you about discussing this case. Do not discuss it, or do not permit anyone to discuss it with you. Don't discuss it amongst yourselves until it is finally submitted to you, as it will be probably before many days have passed.

Return at 1:30.

(Whereupon a recess was taken until 1:30 o'clock p.m. of the same day, Wednesday, January 17, 1951.)

1274 * * Caption—No. 50 CR 464 * *

Chicago, Illinois,
January 17, 1951,
1:30 o'clock p.m.

Met pursuant to recess.

Present:

Mr. Downing
Mr. Owen
Mr. Gerber
Mr. Bartoline
Mr. Sokol
Mr. Eben
Mr. Watt
Mr. Weissbourd

And thereupon the following further proceedings were had herein:—

By the Court: Bring in the jury.

(Whereupon the following proceedings were had in the presence and hearing of the jury:)

1366 * * Caption—No. 50 CR 464 * *

Chicago, Illinois,
January 18, 1951,
9:00 o'clock a.m.

Met pursuant to adjournment.

Present:

Mr. Downing
Mr. Owen
Mr. Gerber
Mr. Bartoline
Mr. Sokol
Mr. Eben
Mr. Watt
Mr. Weissbourd

And thereupon the following further proceedings were had herein:—

By the Court: Proceed.

1477 Thereupon, the Court charged the jury, as follows:

By the Court: Ladies and gentlemen of the jury:

It is the duty of the court to deliver to you instructions for your guidance in the consideration of the evidence and in your deliberations upon this case.

The instructions which the court will give you, in so far as they pertain to the principles of law applicable to this case, must be accepted by you as a binding control and guide in your consideration of the evidence and in your deliberations.

The responsibility rests upon you to determine the facts of this case, under the law as the court may give it to you, uninfluenced by any expression of opinion that the court has made or may hereafter make upon matters of fact. The court has not intended at any time during the trial of this case, and does not intend at any time, to express any opinion on any matter of fact, and if the Court has expressed or does express any opinion on any matter of fact you are at liberty to disregard such opinion, and it is your duty to disregard it, if it is different from your own opinion.

1478 The first thing I wish to make plain to you is the way in which our American system of jurisprudence defines the duties of the judge on the one hand and those of the jury on the other. It is exclusively my function clearly to set forth the rules of law which govern the case, with instructions as to their application. On these legal matters you must take the law as I give it to you; you are not at liberty to do otherwise. On the other hand, you are the sole judges of the facts and I shall refer to this circumstance again to impress it upon you.

Just as you are not permitted to encroach upon my function in giving instructions on the law, so must I be careful not to encroach upon your function as the sole judges of the facts.

I have already told you not to read anything about the case in the newspapers, and I now tell you that you must not consider, in your determination of the guilt or

innocence of these defendants in accordance with these instructions, anything you may have read or heard other than the exhibits and testimony received and given in this court room. And when I say "anything", I mean it in the fullest sense of the word. This includes anything you 1479 may have read about this case or any other case.

Do not permit any extraneous matters affecting race or religion or color or anything else to affect you one iota. You must concentrate on the evidence to the complete exclusion of everything else. For this reason you are also to make quite sure that you are not in any manner affected by the nature of the charge made against these defendants. You are to consider the evidence bearing on the charge of conspiracy set up in this indictment just as you would consider the evidence bearing on any other charge of committing a crime against the laws of the United States; and the Government here must be considered in no different light than any other litigant who pleads for justice; and counsel for the Government must be considered in no different light than counsel for the defendants or for any other litigant. The law does not permit jurors to be governed by conjecture, passion or prejudice, public opinion or public feeling.

This is a criminal case, and the law in such cases is that a defendant comes into court presumed to be innocent, and that presumption protects him until such time, 1480 if such time shall come, when the jury shall believe from the evidence in the case, beyond a reasonable doubt, that the defendant is guilty as charged in the indictment or some count thereof.

The guilt of an accused is not to be inferred because the facts proven are consistent with his guilt, but, on the contrary, before there can be a verdict of guilty, you must believe from all the evidence, and beyond a reasonable doubt, that the facts proven are inconsistent with his innocence. If two conclusions can reasonably be drawn from the evidence, one of innocence and one of guilt, you should adopt the former.

The defendants on trial have pleaded not guilty. This puts the burden of proving the charges in the indictment upon the Government, and you cannot find the defendants guilty unless, from all the evidence, you believe them guilty of the offense charged in this indictment beyond a reasonable doubt.

When I refer to the indictment, ladies and gentlemen, I mean the first count of the indictment, the other counts having been dismissed by the Court.

1481 A reasonable doubt is what the term implies,—a doubt founded on reason. It does not mean every conceivable kind of doubt. It does not mean a doubt that may be purely imaginary or fanciful, or one that is merely captious or speculative. It means, simply, an honest doubt that appeals to reason and is founded upon reason. If, after considering all the evidence in the case, you have such a doubt in your mind as would cause you, or any other reasonably prudent person, to pause or hesitate before acting in a grave transaction of your own life, then you have such a doubt as the law contemplates as a reasonable doubt.

You are the sole judges of the credibility and the weight which is to be given to the testimony of the witnesses who have testified upon this trial. In weighing the testimony of each witness you should carefully scrutinize the same; consider all the circumstances under which the witness testifies; his demeanor on the stand; the relation which he bears to the Government or the defendant; the manner in which he might be affected by the verdict; the extent to which he is corroborated or contradicted by other credible evidence, and, in short, any circumstances that tend to throw light upon his credibility. And, 1482 applying these tests which I have just stated, it is for you to determine the weight which is to be given to the testimony of each witness.

Your verdict in this case must be reached from a consideration of all the evidence in the case, but if any evidence was admitted and was later stricken out, you must wholly disregard such evidence as was stricken out.

During the trial of a lawsuit it often becomes the duty of counsel for the parties to object to questions, or to evidence, and I instruct you that you shall not take into consideration against such party either such objections or the number of them, nor permit yourselves to be in any way influenced by such objections against the parties.

The fact that an indictment has been returned is not evidence; nor is the indictment evidence; and neither the indictment nor the return thereof should be considered you you in determining the guilt of the defendant. The indictment is not to be treated by you as raising any

kind of presumption or creating any kind of prejudice against the defendant. The indictment is simply the form or manner prescribed by law for preferring a charge 1483 against an individual, and must be regarded in that light, and in no other light.

The Government, by calling witnesses to the stand in this case, vouched for their credibility. By this, the court means that the Government assumes responsibility for the statements made by such witnesses and the inferences which flow from their testimony. All of the witnesses in this case were called by the Government, other than the witness Grace Klemtner, who was called by the court, as the court's witness.

If you find from the evidence that any witness was an accomplice in the sense that she participated in the alleged crime charged in the indictment, then the court instructs you that her testimony is liable to grave suspicion and you should act upon such testimony with great care and caution and subject it to careful examination in the light of all of the other evidence in the case, and you should consider the influence under which such testimony is given and whether the purpose of the witness was to obtain some benefit to herself or to gratify her malice.

There are two kinds of evidence—direct and cir- 1484 cumstantial. Direct evidence is that sort of evidence

by which a fact is proved directly and without inference from other facts, and is usually given by witnesses who saw, heard or otherwise observed some particular fact or occurrence. Circumstantial evidence is that sort of evidence by which an inference of an unknown fact is drawn from the existence of known facts. For example; if, when you went to bed at night you saw the ground was bare of snow, and in the morning when you awakened, you saw the ground covered with snow, while you had not seen the snow fall, nevertheless you can infer from the evidence you see, that it has snowed during the night. That is an illustration of what circumstantial evidence is.

Circumstantial evidence in criminal cases is the proof of such facts and circumstances connected with or surrounding the commission of the crime charged as tend to show the guilt or innocence of the party charged. If the facts and circumstances shown by the evidence in this

case are sufficient to convince the jury of the guilt of the defendants, or any of them, beyond reasonable doubt, then such evidence is sufficient to authorize the jury to find that defendant or those defendants, guilty.

1485 The law demands a conviction where there is sufficient legal evidence to show a defendant's guilt beyond a reasonable doubt, and circumstantial evidence is legal evidence.

You are not to take into consideration as against a defendant the fact that he did not testify. The law gives to a defendant an absolute privilege to testify or not to testify, as he deems best. If he does go on the witness stand and testify, then he is like any other witness. If he does not testify, that is not in any sense to be taken against him. He is exercising only the absolute right that is given him by the law. What I mean to say is that you must give full effect to the provision of the law that the fact that a defendant does not testify shall not create any presumption of guilt against him and must not be taken into consideration by you against him.

In weighing and considering the credibility of a witness, the jury should consider whether the witness has received, or hopes to receive, any reward or immunity or benefit from the prosecution of this case, or has had his or her feeling or passions enlisted against the defendants, or any of them.

This jury is composed of twelve men and women. 1486 While undoubtedly their verdict should represent the opinion of each individual juror, it by no means follows that opinions may not be changed by conference in the jury room. The very object of the jury system is to secure unanimity by comparison of views and by arguments among the jurors themselves, provided this can be done reasonably and consistently with the conscientious convictions of the several jurors. Each juror should listen, with the disposition to be convinced, to the opinions and arguments of the others. It is not intended that a juror should go to the jury room with a fixed determination that the verdict shall represent his opinion of the case at that moment. Nor is it intended that he should close his ears to the arguments of other jurors who are equally honest and intelligent with himself.

Certain statements, allegedly made by the defendants

in this case, have been received in evidence and read to you, in whole or in part. You are instructed that these statements are not to be considered by you as evidence against any defendant other than the defendant who made the statement.

The indictment in this case contains six counts. The 1487 court has dismissed all of the counts other than the

First Count. You are completely to disregard Counts 2 to 6, inclusive, of the indictment, except as those counts are, by the wording of Count One, made a part of said Count One.

Count One names as defendants Munio Knoll, alias Zygmunt Romankiewicz, Marcel Max Lutwak, Regina Treitler, Leopold Knoll and Grace Klemtner, alias Grace Klemtner Knoll. Grace Klemtner, alias Grace Klemtner Knoll, is not a defendant in this case, and you are to consider Count One as against the defendants Munio Knoll, alias Zygmunt Romankiewicz, Marcel Max Lutwak, Regina Treitler and Leopold Knoll only.

Count One, briefly stated, charges a conspiracy to obtain the entry of aliens into the United States by means of false statements and by concealing material facts and to defraud the United States of a governmental function. It is charged, in Count One, that the four defendants, Munio Knoll, Marcel Max Lutwak, Regina Treitler and Leopold Knoll, on or about July 1, 1947, and continuously thereafter up to the date of the indictment, August 7, 1950, in this District and at divers other places, did unlawfully, wilfully and knowingly conspire, combine, con-

federate and agree together and with each other, to 1488 commit offenses against the United States; that is

to say, the offenses set forth in Counts Two to Six, inclusive, of the indictment, the descriptions of which offenses will be related to you hereafter, and to defraud the United States of and concerning its governmental function and right of administering the immigration laws of the United States, of and concerning its governmental function and right of administering the Immigration and Naturalization Service of the United States Department of Justice, and of and concerning its governmental function and right to have the business and affairs of the said Immigration and Naturalization Service, in the consideration, administration, investigation and disposition

of matters affecting and affected by the Immigration and Naturalization Service conducted in its behalf honestly and free from fraud, deceit, misrepresentation, concealment of a material fact, interference and obstruction. Count One further charges that the said conspiracy was in manner and substance as follows: That in the summer of 1947 Maria Knoll, alias Maria Irena Lutwak, and the defendants Munio Knoll, alias Zygmunt Romankiewicz, and Leopold Knoll, were then and there aliens and 1489 not citizens of the United States and resided in

Paris, France; that one Bessie Benjamin Osborne and Grace Klemtner and Marcel Max Lutwak were unmarried citizens of the United States who had served in the Armed Forces of the United States during the Second World War and had theretofore been honorably discharged from such service; that it was a part of said conspiracy that Marcel Max Lutwak would, in the summer of 1947, journey from the United States to Paris, France, and there go through the form of a marriage ceremony with Maria Knoll, and that thereafter, in the year 1947, said Maria Knoll would journey to the United States and would be permitted to enter the United States for permanent residence as a non-quota immigrant by the United States immigration authorities at the Port of New York upon the representation that she was the alien spouse of a United States citizen having an honorable discharge from the Armed Forces of the United States during the Second World War under the provisions of Section 232, Title 8 United States Code; that it was further a part of said conspiracy that said Bessie Benjamin Osborne would go from the United States to Paris and go through the form of a marriage ceremony with the defendant Munio Knoll, alias Zygmunt Romankiewicz and thereafter be permitted to enter the United 1490

States for permanent residence as a non-quota immigrant upon the representation that he was the alien spouse of a United States citizen having an honorable discharge from the Armed Forces of the United States; and that it was further a part of said conspiracy that the defendant Grace Klemtner would go from the United States to Paris and there go through the form of a marriage ceremony with the defendant Leopold Knoll, and that thereafter the defendant Leopold Knoll would be

permitted to enter the United States for permanent residence as a non-quota immigrant upon the representation that he was the alien spouse of a United States citizen having an honorable discharge from the Armed Forces of the United States; that it was further a part of said conspiracy that the said marriages would be marriages in form only and would be entered into by the parties thereto solely for the purpose of representing them as marriages to the United States Immigration and Naturalization Service, and that said defendants would agree that after said ostensible marriages had been performed in Paris, France, and after said ostensible marriages had served their purpose to secure the entry of said Maria 1491 Knoll, alias Maria Irena Lutwak and Munio Knoll, alias Zygmunt Romankiewicz, and Leopold Knoll, into the United States for permanent residence as non-quota immigrants the parties to said marriages would not live together in the United States as man and wife and thereafter would take such legal steps to sever the formal bonds of said ostensible marriages as they saw fit; that it was a further part of said conspiracy that said defendants conceal such transactions and acts aforesaid and would do such other, further and different acts as they might deem necessary and expedient to prevent the disclosure to the United States Immigration and Naturalization Service of the existence of said conspiracy.

The indictment further charges that, in furtherance of and for the purpose of carrying into execution said conspiracy, the defendants performed certain overt acts. The court will not now relate the overt acts charged but you will take the indictment with you to your jury room and you may there read the charges of the indictment with respect to the overt acts charged.

The offenses against the United States, which it is alleged the defendants conspired to commit, that is, 1492 the offenses set forth in Counts Two to Six, inclusive, of the indictment, are, briefly stated, the offenses of obtaining entry into the United States as an alien immigrant by means of false statements and by concealing material facts and aiding and abetting so to do, and making false statements under oath in applications required by the immigration laws of the United States.

The law of the United States upon which this First Count is based reads, in part and so far as material here, as follows:

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished."

It is not necessary, under this conspiracy count, that the Government prove that the defendants committed the offenses set forth in the other counts of the indictment, or that the defendants defrauded the United States. The charge in this First Count is that the defendants conspired to do those things.

1493 The essence of the offense of conspiracy is the unlawful combination, confederation, or agreement to commit an offense against the United States, or to defraud the United States. To "conspire" means to agree, to combine, to confederate.

It is not necessary, to constitute a conspiracy, that two or more persons should meet together and enter into an explicit and formal agreement for an unlawful scheme, or that they should directly, by words or in writing, state what the unlawful scheme was to be and the details of the plans by means of which the unlawful combination was to be effected. It is sufficient that two or more persons, in any manner or through any contrivance, positively or tacitly, come to a mutual understanding to accomplish the common and unlawful design charged.

In determining whether or not a conspiracy has been proved in this case, you should inquire into what has been done, the movements of the alleged conspirators, their conduct, their accomplishments, if any, together with all of the other facts and circumstances adduced in evidence in the case and bearing upon that issue.

Your inquiry should be: First, Did the defendants, 1494 or some of them, conspire together to do the unlawful acts charged in the indictment? And, second, if they did so conspire, Did they thereafter, with the view of carrying out the object of such conspiracy, do one thing set forth as an overt act in the indictment towards such end? If they did so conspire together and take one or

more steps, set forth as overt acts, toward the accomplishment of that unlawful purpose, the offense of conspiracy is complete, even though the object of the conspiracy is never attained.

You will observe that the Government and the grand jury have, in this indictment, charged many overt acts. An overt act means an act done for the purpose of carrying out the design, the unlawful purpose, and it must be done by one or more members of the conspiracy, if it has been found that there was a conspiracy, and must be of such a character as appears to you to have been done in order to carry out the unlawful purpose. It is not necessary that you find that all of the overt acts charged were performed, but it is necessary that you find that at least one of the overt acts charged was done, and done with the intent of accomplishing the purpose of the conspiracy, before you would be warranted in finding the defendants, or any of them, guilty under this conspiracy count.

The members of a conspiracy need not necessarily know all of the other members of the conspiracy. Of course, it is necessary that they should know some of the members of the conspiracy, but they need not know or be acquainted with or have knowledge that other members, who are later members of the conspiracy, were in the conspiracy.

A person may enter a conspiracy after it has been formed and before its final completion and assist in carrying out the conspiracy, and thereby be a part of such conspiracy, even though he was not a member of such conspiracy at the time of its inception.

During the trial, evidence has been admitted only as to certain defendants. You may consider that evidence, so limited, only as to those defendants, and not as to other defendants.

Under the First Count of the indictment, that is, the conspiracy count, the rule in respect of declarations, statements and conversations made out of the presence of the other defendants is as is next hereinafter stated. The declarations, statements and conversations of one or more defendants, made out of the presence of the other defendants, is not binding upon any other defendant, unless the evidence—not including any of such

declarations, statements or conversations other than his own—shows, beyond a reasonable doubt, that such other defendant was a participant in the conspiracy charged in the First Count of the indictment at the time of such declarations, statements or conversations, and unless, further, the declarations, statements and conversations were in furtherance of the conspiracy and made during its continuance. When men enter into an agreement for an unlawful end, they become agents for one another and have made a partnership in crime. What one does pursuant to the common purpose, all do, and declarations, statements or conversations by one in furtherance of the conspiracy and during its continuance are competent against all. It is wholly a question of fact for the jury to determine who, if any, were the members of the conspiracy charged in the First Count of the indictment, if you find there was such a conspiracy.

The jury is instructed that, under the laws of the United States of America, alien spouses of United States 1497 Citizens serving in, or having an honorable discharge certificate from the Armed Forces of the United States during the Second World War, shall, if otherwise admissible under the Immigration Laws, be admitted to the United States.

You are further instructed that under the evidence in this case, Bessie B. Osborne, Grace Klemmer, and Marcel Lutwak, were members of the Armed Forces of the United States during World War II, and were honorably discharged.

The Statute under which the aliens entered into the United States as non-quota immigrants did not vest in the immigrants an absolute right to enter into the United States. The entry of each of the aliens in the instant case into the United States was expressly on the condition that they were married to citizens of the United States who had been honorably discharged from the Armed Forces of the United States. It is a question of fact based upon the evidence in this case for the jury to determine whether or not at the time the aliens entered into the United States under the provisions of the United States Code they were in fact entering as man and wife and to thereafter reside in the United States as man and wife.

1498 "Marriage" may be defined as the civil status of one man and one woman, capable of contracting, united by contract and mutual consent for life, for the discharge, to each other and to the community, of the duties legally incumbent on those whose associations is founded on the distinction of sex. As distinguished from the civil status, it is a contract under which a man and a woman reciprocally engage to live with each other during their joint lives, and to discharge toward each other the duties imposed by law on the relation of husband and wife. In its more limited signification the term "marriage" is used to denote merely the acts, agreement, or ceremony by which two persons enter into wedlock.

The marriage of a man and woman where one of the parties thereto has a husband or wife by a prior marriage who is then living and undivorced is void.

Mutual consent is necessary to every contract and no matter what forms of ceremonies the parties may go through indicating the contrary, they do not contract if they do not in fact assent, which may always be proved. Marriage is no exception to this rule: a marriage in jest

is not a marriage at all. It is quite true that a marriage without a subsequent consummation will be valid; but if the subjects agree to a marriage only for the sake of representing it as such to the outside world and with the understanding that they will put an end to it as soon as it has served its purpose to deceive, they have never really agreed to be married at all. They must assent to enter into the relation as it is ordinarily understood, and it is not ordinarily understood as merely a pretense or cover to deceive others.

You are hereby instructed that it is for you, the jury, to determine from all of the facts in evidence what the intentions of the parties were at the time the marriage ceremonies were performed.

In order to constitute a valid marriage, the essentials common to all contracts, capacity and consent, must be present. In this connection mere words without any corresponding intention will not create the marriage relation and notwithstanding formalities indicating consent have been complied with, there is not a valid marriage where

the parties do not intend to enter into the marriage relation.

In order for a marriage to be valid, it is essential that each party have the necessary capacity to marry and that each party consent to the marriage.

1500 By capacity is meant the absence of any of the impediments imposed by law on a person's marrying, such as lack of the requisite age, physical or mental defects, or an undissolved prior marriage.

By consent is meant consent to the entry into marriage. This consent must be expressed in some affirmative manner, as where each party, during the marriage ceremony, communicates or states his consent and his intention to be bound and to assume the duties and obligations of marriage. It is sufficient if the parties intend immediately to be bound permanently, even though they do not intend forthwith to assume all the duties and responsibilities of marriage. Moreover, once there is this meeting of the minds and the marriage ceremony required by law is performed, the marriage is complete and the status of the parties as married becomes fixed by law, even though they immediately repudiate the agreement and thereafter act in total disregard of their marital rights and duties.

Although the cohabitation of the parties, subsequent to the marriage, is evidence of the existence and reality of their consent, cohabitation is not necessary to the validity of the marriage. Nor is a marriage invalid merely because it has not been consummated.

1501 If the consent of the parties is plainly expressed, a secret reservation of one of the parties will not invalidate the marriage, nor will the fact that one of the parties gave his consent to the marriage because of some ulterior motive or motives invalidate it. If the essentials of capacity and consent are present, the marriage is valid.

even though one of the parties consented because he 1502 expected some material advantage as the direct consequence of his entering into the marriage. The mere fact that one of the parties to a marriage knew and expected that by reason of entering into the marriage his coming to the United States would be facilitated does not in and of itself render the marriage invalid.

A person must be presumed to intend to do that which he voluntarily and wilfully does in fact do, and must also be presumed to intend all the natural probable and usual consequences of his acts, and conduct.

The law says we have no power to ascertain the certain condition of a man's mind. The best we can do is to infer it more or less satisfactorily from his acts.

You will bear in mind at all times that these four defendants are charged here as four individuals, the guilt or innocence of each of which must be passed on by you separately, pursuant to and in accordance with the instructions which I am about to give you.

The jury is instructed that the mere fact that these defendants have been tried together or have been indicted together is no evidence that a conspiracy existed among them. Each defendant in this case is entitled to have

1503 his or her guilt or innocence determined for himself or herself. In making this determination, you must decide whether each individual defendant knowingly or with intent became a party to a criminal conspiracy. Un-less you are satisfied beyond a reasonable doubt and to a moral certainty that each such defendant had such intent, you should find that defendant or defendants not guilty. For this purpose you will be given separate forms for verdict as to each defendant.

You must determine from all the evidence in the case, relating to the period of time defined in the indictment, whether or not a conspiracy existed. If you decide that a conspiracy did exist, you must next determine, as to each defendant, whether or not he was a member of the conspiracy. In considering whether or not a particular defendant was a member of the conspiracy, you must do so without regard to and independently of the statements and declarations of others. In other words, you must determine the membership of the particular defendant from the evidence concerning his own actions, his own conduct, his own declarations, or his own statements, and his own
1504 connection with the actions and conduct of others.

I charge you that it is not enough for the prosecution to show the existence of an agreement and the membership therein of any particular defendant. This alone would not prove that such defendant participated in the

agreement "knowingly and wilfully". With respect to each defendant, the prosecution has the further burden of proving beyond a reasonable doubt that such defendant participated in such agreement wilfully; that is, the prosecution must prove that such defendant entertained the specific intention to do one or more of the acts which are charged as the objects of the conspiracy.

I charge you that you cannot find any defendant in this case guilty of the crime charged against him or her merely from the fact, if you find it to be a fact, that he associated with, or was related to, any other defendant or defendants whom you may find guilty of the offense charged.

The mere knowledge, acquiescence, or approval of an act, without cooperation or agreement to cooperate, is not enough to constitute one a party to a conspiracy. 1505 There must be intentional participation in the transaction, with a view to the furtherance of the common design and purpose, to constitute a party a conspirator.

The sole question before you is whether the defendants named in the indictment are guilty of the charge therein laid against them. Your only task is to determine whether they or any of them are guilty or not guilty as charged. You have no concern with the guilt of any person or persons not named in the indictment or not defendants in the trial which has just drawn to a close. If the evidence or any circumstance surrounding the presentation points to the guilt of any person or persons not named in the indictment or not on trial before you, you are in no sense to consider such evidence or such circumstances except in so far as it bears upon the question of the guilt or innocence of the defendants or some of them.

You have only one duty to perform, and that duty is to tell the court whether or not the defendants are or are not guilty as charged in the indictment. Under no circumstances need you consider the matter of punishment. That is a matter committed to the attention of the court alone.

When you go to the jury room, ladies and gentlemen, 1506 you will take with you the indictment, bearing in mind what I told you, that the second, third, fourth, fifth and sixth counts have been dismissed by the Court and that you will disregard those counts, except as they are by the wording of the first count made a part of that

first count. The only count before you is the first count. To understand the first count, you will have to read the second through the sixth counts, but that only for the purpose of understanding the first count, and it is only the first count that is before you. The charge set forth in the first count, that of conspiracy, is the only count before you.

You will take that indictment, the transcript of the instructions which I have just read to you, and ten forms of verdict.

The first form which you will take with you reads as follows:

"We, the jury, find the defendants Munio Knoll, alias Zygmunt Romankiewicz, Marcel Max Lutwak, Regina Treitler and Leopold Knoll, not guilty as charged in count one of the indictment."

If you find all four of the defendants not guilty, 1507 the twelve of you will sign this form, which I have just read to you and return it with you into court.

The next form which you will take with you reads as follows:

"We, the jury, find the defendants Munio Knoll, alias Zygmunt Romankiewicz, Marcel Max Lutwak, Regina Treitler and Leopold Knoll, guilty as charged in count one of the indictment."

If you find all four of the defendants guilty, you will use this form which I have just read to you. The twelve of you will sign the form and return it with you into court.

Then there are four forms of verdict, the first one of which reads:

"We, the jury, find the defendant Munio Knoll, alias Zygmunt Romankiewicz, not guilty as charged in count one of the indictment."

If you want to make separate findings as to the defendants, use these forms. This form which I have just read to you is the form which you will use if you want to find

Munio Knoll, alias Zygmunt Romankiewicz, not guilty. 1508 If you use the form, the twelve of you will sign it and return it with you into court.

There is another form exactly similar to the one which I have just read, but in that in the place and stead of

Munio Knoll's name appears the name Marcel Max Lutwak. The same instructions that I have given you with respect to the Munio Knoll verdict applies with respect to the Lutwak verdict.

The third of these four, the name of Regina Treitler appears in it instead of the name Munio Knoll, and the same instructions with respect to this form applies as applied to the Munio Knoll form.

In the fourth of these four forms, the name Leopold Knoll applies in the place and stead of that of Munio Knoll, and the same instructions apply to this one as I have given you with respect to the verdict relating to Munio Knoll.

You will also take with you four further forms, the first of which reads:

"We, the jury, find the defendant Munio Knoll, alias Zygmunt Romankiewicz, guilty as charged in count one of the indictment."

1509 If you desire to find Munio Knoll guilty, then you will use this form—if you wish to make different verdicts with respect to the different defendants. If you so desire, you will use this form which I have just read to you. The twelve of you will sign it and return it with you into court.

Then there is a form of guilty verdict for Marcel Max Lutwak, one for Regina Treitler and one for Leopold Knoll. These are the forms you will use if you desire to make separate verdicts of guilty with respect to the individual defendants.

I suggest, ladies and gentlemen, that when you go to the jury room you first select one of your number to act as foreman or forewoman to preside over your deliberations.

You may swear the Marshals.

(Thereupon two Deputy Marshals were duly sworn.)

By Mr. Eben: Merely a matter of procedure at this point, under the rule any objections that either side has to the instructions must be made after the jury is instructed—

By The Court: I understand.

By Mr. Eben: Before they retire to deliberate, but
1510 not in their presence.

By The Court: I understood you made your objections.

By Mr. Eben: I think we may have some further ones at this point, and I respectfully suggest to your Honor—

By The Court: You may step into the jury room.

Let the alternates be discharged.

(The two alternate jurors being discharged, the jury, composed of the 12 regular jurors, then retired to deliberate upon its verdict or verdicts.)

(Whereupon, out of the presence and hearing of the jury, the following further proceedings were had.)

By Mr. Sokol: Do you think it necessary that the alternates leave before they start to deliberate?

By Mr. Gerber: The Marshal will see to that, I guess.

By Mr. Sokol: I would like to voice an objection. I believe that there was sufficient conversation with respect to the instructions which are tendered with respect to Grace Klemntner—

By The Court: You what?

By Mr. Sokol: At the time we spoke with respect to the accomplice instruction which was tendered by the 1511 defense, it was certainly never intended that accomplice statement would accompany the word of the court that Grace Klemntner had been called as the Court's witness, to suggest and take her out of context, so to speak.

By The Court: Well, now, gentlemen, I am not—

By Mr. Sokol: I feel—

By The Court: You arouse my—I gave you all the opportunity; longer than I ever gave counsel in any other case, to object, and in fairness to me you should have voiced your—

By Mr. Sokol: I am not making new objections.

By The Court: Then what are we spending time on? I will give you all the objections you made during our consideration. Why are we wasting time?

By Mr. Sokol: I am not trying to waste time. All I am suggesting is that your Honor followed the characterization of Grace Klemntner as the Court's witness with the accomplice statement. In that way it lifted Grace Klemntner, being the only accomplice in the case—

By The Court: My dear sir, I cannot put wings on your defendants for you. I never went so far, that I can remember, to give everything that counsel wanted in 1512 this case, and I gave you more opportunity to object to these than I ever gave any other counsel. Now what do you gentlemen want?

By Mr. Eben: I am trying to find out, if your Honor will bear with me—it seems, I am informed here, that your Honor gave some of the instructions which I believe were withdrawn by the Government.

By Mr. Downing: They were withdrawn because the Court already covered them in the group of instructions.

By Mr. Eben: In haec verba.

By The Court: I did not give one that was withdrawn.

By Mr. Eben: I am trying to find out. All that I would like the record to show now is that we renew all the objections we made before.

By The Court: You have all the objections, I understand you have all the objections you voiced while we were considering these instructions at great length.

By Mr. Eben: It now seems to be the proper time to interpose objections as to send the indictment in present form to the jury—

By The Court: Overruled.

By Mr. Eben: As to four defendants—

1513 By The Court: Overruled.

By Mr. Downing: Government's Exhibits 14 through 18, your Honor, heretofore there has been discussion in the record showing certain of those statements and questions have been eliminated. I have not physically removed them, and I now make a motion to physically remove them, and I have scissors and staples, and we will do it here in the court room.

By The Court: Very well.

By Mr. Eben: That has nothing to do with 18, because nothing was taken out.

By Mr. Downing: Yes. One statement on page 9.

By The Court: Unless you are sure of your point—and I am sure I didn't read anything—I wish you would withdraw your statement from the record that I read something that was withdrawn.

By Mr. Eben: As far as I recall, speaking truthfully and frankly and with sincerity, I have no recollection of anything with respect to perjury being taken out. Apparently I was not in the court room.

By Mr. Downing: No. The Judge is talking about the instructions.

By Mr. Eben: I am not talking about the instructions.

1514 By The Court: I am asking you to withdraw the statement that I read something the Government withdrew.

By Mr. Eben: I will withdraw it. I will withdraw it and I will say to you that I did not intend for you to draw any inferences—

By The Court: I don't like—

By Mr. Eben: And by inferences, I mean harmful inferences. All I had in mind was to bring it to your Honor's attention. I am not even sure that had the instructions been given, they might not have been proper, but no objection was filed to that, and I make no objection on that.

By The Court: All right.

Assemble your exhibits, gentlemen, so that the Marshal can take them to the jury room.

(And thereupon, at 1:35 o'clock p.m., proceedings herein were recessed while the jury deliberated upon its verdict or verdicts.)

1515

* * Caption—No. 50 CR 464 * *

Chicago, Illinois.

January 18, 1951.

5:55 o'clock p. m.

Met pursuant to recess.

Present:

Mr. Downing

Mr. Owen

Mr. Gerber

Mr. Bartoline

Mr. Sakol

Mr. Eben

Mr. Watt
Mr. Weissbourd

And Thereupon the following further proceedings were had herein:

(The following proceedings were had out of the presence and hearing of the jury:)

By Mr. Eben: May it please the Court, I ask leave to address your Honor because I understand from the Marshal it won't be long before he is taking the jury to dinner. There is a banquet over at the Blackstone Hotel to which I have been invited tonight, which, it is probably, will be over about 8:00 or 8:30. I was told it would be. With your Honor's permission, I would like to go to it. I am not more than ten minutes away. I will leave word with the operator where I am.

By The Court: Can't you leave somebody to look after the interests of your client while you are away?

By Mr. Eben: Mr. Watt and Mr. Weissbourd will be here, one or the other, in any event.

By The Court: If there is any need to communicate with representatives of your client, I will be at liberty to call them?

By Mr. Eben: They have full authority, just as if I were here.

By The Court: All right, that will be all right.

(Thereupon, after an intermission, the following proceedings were had at 6:08 p.m.):

By The Court: Bring in the jury.

(The following proceedings were had in the presence and hearing of the jury:)

By The Court: Have you arrived at a verdict, ladies and gentlemen?

Foreman of Jury: Yes, sir.

By The Court: You may hand the verdict to the Marshal, please.

(Handing paper to Marshal.)

By The Court: You may read the verdict, Mr. Clerk.

By the Clerk: 50 CR 464, United States of America versus Munio Knoll, et al:

We the jury, find the defendant Munio Knoll, alias Zygmunt Romankiewicz, guilty as charged in count one of the indictment.

Signed by the 12 jurors.

50 CR 464, United States of America versus Munio Knoll, et al:

We, the jury, find the defendant Marcel Max Lutwak guilty as charged in count one of the indictment.

Signed by the 12 jurors.

50 CR 464, United States of America versus Munio Knoll, et al:

We, the jury, find the defendant Regina Treitler guilty as charged in count one of the indictment.

Signed by the 12 jurors.

50 CR 464, United States of America versus Munio Knoll, et al:

1518 We, the jury, find the defendant Leopold Knoll not guilty as charged in count one of the indictment.

Signed by the 12 jurors.

By Mr. Sokol: May the jury be polled?

By The Clerk: Each juror will rise as his name is called and respond to the question that is put to him.

Neal D. Sim, is this your verdict?

By Juror Sim: It is.

By The Clerk: Jean S. Smith, is this your verdict?

By Juror Smith: It is.

By The Clerk: Charles J. Burns, is this your verdict?

By Juror Burns: It is.

By The Clerk: Oscar C. Landis, is this your verdict?

By Juror Landis: It is.

By The Clerk: Alma G. Barnes, is this your verdict?

By Juror Barnes: It is.

By The Clerk: Estelle M. Deutinger, is this your verdict?

By Juror Deutinger: It is.

By The Clerk: Agnes E. Prock, is this your verdict?

By Juror Prock: It is.

By the Clerk: Elijah Johnson, is this your verdict?

1519 By Juror Johnson: It is.

By The Clerk: Lorayne M. Blythe, is this your verdict?

By Juror Blythe: It is.

By The Clerk: Joseph P. Marella, is this your verdict?

By Juror Marella: It is.

By The Clerk: Laurence I. Parmenter, is this your verdict?

By Juror Parmenter: It is.

By The Clerk: Randall R. Howard, is this your verdict?

By Juror Howard: It is.

By The Clerk: So say you all, this is your verdict.

By The Court: You may now enter the verdict, Mr. Clerk.

Thank you for your attention to this case, ladies and gentlemen. You may now be excused. I hope you have not missed your trains and I hope you will still be able to get a train. Where do you want them to go?

The Marshal: You will report at Room 702 this building, the jury quarters, a little before 10:00 o'clock tomorrow.

1520 By Mr. Sokol: Your Honor, I respectfully ask that the bonds at present in effect stand at least until tomorrow morning.

By Mr. Eben: I have something to say on that, your Honor, at least with respect to the defendant Marcel M. Lutwak and Munio Knoll and Regina Treitler, but at least as to Munio Knoll and Marcel Lutwak. I think the bond which is presently \$1,000 should be raised to \$5,000, in view of the conviction. Marcel Lutwak and Munio Knoll have nothing in Chicago to keep them here. This, I think, is a major offense. I think the bond of a thousand dollars is very nominal. I do appreciate the connection of Regina Treitler. She is a housewife. There is a little more to tie her with respect to remaining here than there is with respect to Marcel Lutwak or Munio Knoll. But I do urge that the Court give consideration to increasing the bond from \$1,000 to \$5,000 if sentence is not to be imposed this evening.

By Mr. Bartolino: If the Court please, on behalf of Marcel Lutwak, his family is here. He has lived here in Chicago ever since he was discharged from the service, and lived here in Chicago while he was in the service. He has no reason to leave the jurisdiction, and there is
1521 no reason here to indicate that he would even think of leaving this jurisdiction.

By Mr. Gerber: As to Munio Knoll, if the Court please, he is already under bond of \$2,000 in the Immigration Department on deportation proceedings. He is also working as the manager of a couple of hotels for a friend of his, who is here in court to vouch for him. He has been working for this man in a responsible position for some time.

By The Court: Does Mrs. Treitler have children?

By Mr. Sokol: Yes, your Honor.

By Mr. Downing: Grown children.

By Mr. Sokol: Grown children.

By The Court: Where do they live?

By Mr. Sokol: In Chicago.

By The Court: Is her husband living?

By Mr. Sokol: Yes.

By Mr. Downing: I am not strongly urging her bond be increased to five thousand, but I think there should be an increase on the other two, and I am strongly urging that.

By The Court: Well, I think these bonds were too low to start with. Did I fix them?

By Mr. Bartoline: Yes, you did.

1522 By Mr. Downing: At our suggestion, your Honor. We will take the responsibility.

By The Court: I do not like to make the defendants spend money unnecessarily, but I think these bonds are low.

By Mr. Owen: Your Honor, Munio Knoll is under bond of \$3,000, a thousand here and two thousand in the deportation office. That is three thousand.

By The Court: Well, the bonds of Munio Knoll and Marcel Lutwak will be fixed at \$5,000 apiece.

By Mr. Gerber: Will your Honor grant us until tomorrow morning to make these bonds?

By The Court: That would be the most asinine thing that could be thought of. Wouldn't that be absurd? I would not even think of it.

By Mr. Gerber: The reason I asked, I asked the bondsman in the building in the event we needed a bond, if he would be available. We will make a surety bond.

By The Court: I will be back here at 11:00 o'clock, providing the District Attorney is here to approve the bond.

By Mr. Downing: I have no authority to approve a bond in our office. The one in the office authorized to 1523 approve bonds has gone home.

By The Court: Ten o'clock, will you be around here about 10:00 o'clock?

By Mr. Downing: I would like to catch a train at 6:45 or I would have to wait until 9:30.

By The Court: Can you be ready at 9:00 o'clock?

By Mr. Gerber: I will try my best.

By The Court: Your train is what?

By Mr. Downing: 6:45, then I will have to wait until 9:30.

By The Court: Where do you live?

By Mr. Downing: Glenview. I have another meeting I am supposed to be at.

By The Court: When can you get a bond?

By Mr. Gerber: I am trying to get one now. I have hopes I may be able to. His boss is here. I will ask him if he could write a check.

By The Court: I will wait here until 6:30, so that counsel can get away.

By Mr. Downing: Your Honor, how about these other matters?

By The Court: What other matters?

By Mr. Downing: Are you going to sentence them, or are you going to set that over to another date?

1524 By The Court: I have not heard any motions.

By Mr. Gerber: We would like to make some motions.

By The Court: What are they?

By Mr. Gerber: Can we make them tomorrow morning?

By The Court: Oh, no, make whatever motions you want to make now.

By Mr. Gerber: On behalf of Munio Knoll, I would like to make a motion for judgment notwithstanding the verdict, and a motion for a new trial, if the Court please.

By The Court: Any other motions?

By Mr. Sokol: Yes, we would make a motion for judgment notwithstanding the verdict, and also a motion for a new trial.

By Mr. Bartoline: I make those motions on behalf of Marcel Lutwak.

By The Court: When do you want to argue them?

By Mr. Sokol: I would need a couple of days to prepare. I have been busy Saturdays and Sundays and every day in court, and nights, and I have not had an opportunity to prepare for something like this.

By The Court: Oh, you have been preparing for two weeks intensively.

1525 By Mr. Gerber: The first part of next week, at your Honor's convenience.

By the Court: Monday morning, at 10:00 o'clock.

By Mr. Eben: Mr. Downing, you will be here until 6:30?

By The Court: I will be here until 6:30.

By Mr. Gerber: Your Honor, I do not think we can make bond tonight. There is no use keeping you here tonight.

By Mr. Downing: Then it is all right to go, your Honor?

By The Court: Yes.

By Mr. Downing: Thank you.

1526

IN THE UNITED STATES DISTRICT COURT
Northern District of Illinois
Eastern Division

• • (Caption—No. 50 CR 464) • •

CERTIFICATE

I hereby certify that the above and foregoing is a full, true and accurate transcript of the original shorthand notes of all of the proceedings had on the trial of the above-entitled cause on January 8, 9, 10, 11, 12, and 15, 16, 17 and 18, 1951.

Roy E. Fuller

Roy E. Fuller

Official Court Reporter

United States District Court

Northern District of Illinois

January 18, 1951.

1527 . Following are Instructions 22; and a, b, c, g, i, j, n, q, s, t, u and x, submitted and given, in words and figures following, to-wit:

1528 INSTRUCTION NO.

The marriage of a man and woman where one of the parties thereto has a husband or wife by a prior marriage who is then living and undivorced is void.

1529 You will bear in mind at all times that these four defendants are charged here as four individuals, the guilt or innocence of each of which must be passed on by you separately, pursuant to and in accordance with the instructions which I am about to give you.

1530 The first thing I wish to make plain to you is the way in which our American system of jurisprudence defines the duties of the judge on the one hand and those of the jury on the other. It is exclusively my function clearly to set forth the rules of law which govern the case, with instructions as to their application. On these legal matters you must take the law as I give it to you; you are not at liberty to do otherwise. On the other hand, you are the sole judges of the facts and I shall refer to this circumstance again to impress it upon you. Just as you are not permitted to encroach upon my function in giving instructions on the law, so must I be careful not to encroach upon your function as the sole judges of the facts.

1531 This jury is composed of twelve men and women. While undoubtedly their verdict should represent the opinion of each individual juror, it by no means follows that opinions may not be changed by conference in the jury room. The very object of the jury system is to secure unanimity by comparison of views and by arguments among the jurors themselves, provided this can be done reasonably and consistently with the conscientious convictions of the several jurors. Each juror should listen, with the disposition to be convinced, to the opinions and arguments of the others. It is not intended that a juror should go to the jury room with a fixed determination that the verdict shall represent his opinion of the case at that moment. Nor is it intended that he should close his ears to the arguments of other jurors who are equally honest and intelligent with himself.

1532 The jury is instructed that the mere fact that these defendants have been tried together or have been indicted together is no evidence that a conspiracy existed among them. Each defendant in this case is entitled to have his or her guilt or innocence determined for himself or herself. In making this determination, you must decide whether each individual defendant knowingly or with intent became a party to a criminal conspiracy. Unless you are satisfied beyond a reasonable doubt and to a moral certainty that each such defendant had such intent, you should find that defendant or defendants not guilty. For this purpose you will be given separate forms for verdict as to each defendant.

1533. I have already told you not to read anything about the case in the newspapers, and I now tell you that you must not consider, in your determination of the guilt or innocence of these defendants in accordance with these instructions, anything you may have read or heard other than the exhibits and testimony received and given in this court room. And when I say "anything" I mean it in the fullest sense of the word. This includes anything you may have read about this case or any other case. Do not permit any extraneous matters affecting race or religion or color or anything else to affect you one iota. You must concentrate on the evidence to the complete exclusion of everything else. For this reason you are also to make quite sure that you are not in any manner affected by the nature of the charge made against these defendants. You are to consider the evidence bearing on the charge of conspiracy set up in this indictment just as you would consider the evidence bearing on any other charge of committing a crime against the laws of the United States; and the Government here must be considered in no different light than any other litigant who pleads for justice; and counsel for the Government must be considered in no different light than counsel for the defendants or for any other litigant. The law does not permit jurors to be governed by conjecture, passion or prejudice, public opinion or public feeling.

1534 You must determine from all the evidence in the case, relating to the period of time defined in the indictment, whether or not a conspiracy existed. If you

decide that a conspiracy did exist, you must next determine, as to each defendant, whether or not he was a member of the conspiracy. In considering whether or not a particular defendant was a member of the conspiracy, you must do so without regard to and independently of the statements and declarations of others. In other words, you must determine the membership of the particular defendant from the evidence concerning his own actions, his own conduct, his own declarations, or his own statements, and his own connection with the actions and conduct of others.

1535 I charge you that you cannot find any defendant in this case guilty of the crime charged against him or her merely from the fact, if you find it to be a fact, that he associated with or was related to any other defendant or defendants whom you may find guilty of the offense charged.

1536 In order for a marriage to be valid, it is essential that each party have the necessary capacity to marry and that each party consent to the marriage.

By capacity is meant the absence of any of the impediments imposed by law on a person's marrying, such as lack of the requisite age, physical or mental defects, or an undissolved prior marriage.

By consent is meant consent to the entry into marriage. This consent must be expressed in some affirmative manner, as where each party, during the marriage ceremony, communicates or states his consent and his intention to be bound and to assume the duties and obligations of marriage. It is sufficient if the parties intend immediately to be bound permanently, even though they do not intend forthwith to assume all the duties and responsibilities of marriage. Moreover, once there is this meeting of the minds and the marriage ceremony required by law is performed, the marriage is complete and the status of the parties as married becomes fixed by law, even though they immediately repudiate the agreement and thereafter act in total disregard of their marital rights and duties.

Although the cohabitation of the parties, subsequent to the marriage, is evidence of the existence and reality of their consent, cohabitation is not necessary to the validity of the marriage. Nor is a marriage invalid merely because it has not been consummated.

2

If the consent of the parties is plainly expressed, a secret reservation of one of the parties will not invalidate the marriage, nor will the fact that one of the parties gave his consent to the marriage because of some ulterior motive or motives invalidate it. If the essentials of capacity and consent are present, the marriage is valid, even though one of the parties consented because he expected some material advantage as the direct consequence of his entering into the marriage.

The mere fact that one of the parties to a marriage knew and expected that by reason of entering into the marriage his coming to the United States would be facilitated does not in and of itself render the marriage invalid.

1538 In weighing and considering the credibility of a witness, the jury should consider whether the witness has received, or hopes to receive, any reward, or immunity or benefit from the prosecution of this case, or has had his or her feelings or passions enlisted against the defendants, or any of them.

1539 Certain statements, allegedly made by the defendants in this case, have been received in evidence and read to you, in whole or in part. You are instructed that these statements are not to be considered by you as evidence against any defendant other than the defendant who made the statement.

1540 The jury is instructed that, under the laws of the United States of America, alien spouses of United States Citizens serving in, or having an honorable discharge certificate from the Armed Forces of the United States during the Second World War shall, if otherwise admissible under the Immigration Laws, be admitted to the United States.

You are further instructed that under the evidence in this case, Bessie B. Osborne, Grace Klemtnner, and Marcel Lutwak were members of the Armed Forces of the United States during World War II, and were honorably discharged.

1541 The Government, by calling witnesses to the stand in this case, vouched for their credibility. By this, the court means that the Government assumes responsibility for the statements made by such witnesses and the inferences which flow from their testimony. All of the witnesses in this case were called by the Government, other than the witness Grace Klemtnner, who was called by the Court, as the court's witness.

1542 And afterwards on, to wit, the 18th day of January, 1951 there were filed in the Clerk's office of said Court 4 certain Verdicts in words and figures following, to-wit:

1543

UNITED STATES DISTRICT COURT
Northern District of Illinois
Eastern Division

* * (Caption—No. 50 CR 464) * *

We, the Jury, find the defendant, Munio Knoll, alias Zygmunt Romankiewicz, guilty as charged in count one of the indictment.

Neal D. Sim
Foreman
Alma G. Barnes
Jean S. Smith
Laurence J. Parmenter
Elijah Johnson
Joseph Marella
Oscar C. Landis
Randall R. Howard
Estelle Deutinger
Charles J. Burns
Lorayne Blyth
Agnes Proch

1544

UNITED STATES DISTRICT COURT
Northern District of Illinois
Eastern Division

• • (Caption—No. 50 CR 464) • •

We, the Jury, find the defendant, Marcel Max Lutwak,
guilty as charged in count one of the indictment.

Neal D. Sim
Foreman
Alma G. Barnes
Jean S. Smith
Laurence J. Parmenter
Elijah Johnson
Joseph Marella
Oscar C. Landis
Randall R. Howard
Estelle Deutinger
Charles J. Burns
Lorayne Blyth
Agnes Proch

1545 6

UNITED STATES DISTRICT COURT
Northern District of Illinois
Eastern Division

• • (Caption—No. 50 CR 464) • •

We, the Jury, find the defendant, Regina Treitler, guilty
as charged in count one of the indictment.

Neal D. Sim.

Foreman

Alma G. Barnes

Jean S. Smith

Laurence J. Parmenter

Elijah Johnson

Joseph Marella

Oscar C. Landis

Randall R. Howard

Estelle Deutinger

Charles J. Burns

Lorayne Blyth

Agnes Proch

1546

UNITED STATES DISTRICT COURT
Northern District of Illinois
Eastern Division

• • (Caption—No. 50 CR 464) • •

We, the Jury, find the defendant, Leopold Knoll, not guilty as charged in count one of the indictment.

Neal D. Sim
Foreman
Alma G. Barnes
Jean S. Smith
Laurence J. Parmenter
Elijah Johnson
Joseph Marella
Oscar C. Landis
Randall R. Howard
Estelle Deutinger
Charles J. Burns
Lorayne Blyth
Agnes Proch

1547 And on the same day, to wit, on the 18th day of January, 1951, being one of the days of the regular January term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

1548

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

• • (Caption—No. CR 464) • •

This being the day to which this cause was continued for further trial again comes the United States Attorney come also the defendants Munio Knoll alias Zygmunt Romankiewicz, Marcel Max Lutwak, Regina Treitler and Leopold Knoll in their own proper persons and by their counsel and the Jury and Alternate Jurors heretofore elected, empaneled and sworn herein for the trial of this cause also come and trial of this cause proceeds and the

Jury now having heard all the evidence adduced by the parties and the arguments of counsel and instructions of the Court it is

Ordered that the Alternate Jurors Frank F. Marculis and Harold H. North be and they are hereby excused from further service in this case and the Jury retire to their rooms in charge of sworn marshals to consider of their verdict and afterward return into open Court and render their verdict and upon their oath do say:

"We, the Jury, find the defendant, Munio Knoll, alias Zygmunt Romankiewicz, guilty as charged in Count One of the Indictment."

"We, the Jury find the defendant, Marcel Lutwak, guilty as charged in Count One of the Indjetment."

"We, the Jury, find the defendant, Regina Treitler, guilty as charged in Count One of the Indictment."

"We, the Jury, find the defendant, Leopold Knoll, not guilty as charged in Count One of the Indictment."

whereupon on motion of counsel for the defendants that the Jury be polled the Clerk inquires of each and every Juror: "Is this now your verdict?" to which inquiry each and every Juror replies in the affirmative and on motion of defendant Leopold Knoll it is

Ordered that said defendant Leopold Knoll go hence without day discharged from further prosecution under the Indictment filed herein against him whereupon the defendants Munio Knoll alias Zygmunt Romankiewicz,

Marcel Max Lutwak and Regina Treitler enter herein 1549 their motions for judgment notwithstanding the verdicts and for a new trial which motions are entered and continued for hearing and disposition to January 22, 1951 at 10:00 o'clock A. M. and on motion of the United States by the United States Attorney it is

Ordered that bonds of defendants Munio Knoll alias Zygmunt Romankiewicz, Marcel Max Lutwak be and the same are hereby increased to the sum of Five Thousand Dollars (\$5,000.00) each and that said defendants be and are hereby remanded to the custody of the United States Marshal and it is

Further Ordered that bond of defendant Regina Treitler heretofore filed herein remain in full force and effect.

1550 And on, to wit, the 22nd day of January, 1951 came the Defendants, Munio Knoll, Regina Treitler and Marcel M. Lutwak, by their attorneys and filed in the Clerk's office of said Court their certain Motions For A New Trial, and Motion In Arrest Of Judgment, Respectively, in words and figures following, to wit:

1551

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

* * (Caption—No. 50 CR 464) * *

MOTION FOR A NEW TRIAL ON BEHALF OF THE
DEFENDANTS, MUNIO KNOEL, alias ZYGMUNT
ROMANKIEWICZ, REGINA TREITLER and MAR-
CEL M. LUTWAK.

Now come the defendants, Munio Knoll, alias Zygmunt Romankiewicz, Regina Treitler and Marcel M. Lutwak, by and through their respective attorneys, and file, in writing, their motion for a new trial, and as grounds therefor, give the following reasons:

1. The court erred in failing to dismiss the indictment herein.

2. The court erred in failing to grant the defendants' motions for a judgment of acquittal at the close of the evidence offered by the government.

3. The court erred in refusing to grant the defendants' motions for a judgment of acquittal notwithstanding the verdict.

4. The court erred in the admission of improper and illegal evidence over the objections of the defendants.

5. The court erred in unduly restricting the cross examination of witnesses offered on behalf of the government.

1552 6. The court erred in admitting into evidence certain exhibits offered on behalf of the government.

7. The court erred in giving certain instructions to the jury offered by the government and the court over the objections of the defendants.

8. The court erred in refusing to read to the jury certain instructions offered on behalf of the defendants.

Motion for New Trial

9. The court erred in calling the witness, Grace Klemtner, as a court witness.

10. The verdict is against the manifest weight of the evidence.

11. The verdict is contrary to law.

12. The evidence does not support the verdict.

13. The evidence does not sustain or prove or support the charge in the indictment herein.

14. The court erred in denying the defendants' motions for a mis-trial.

15. The court erred in permitting the indictment to be taken by the jury for use in their deliberations.

Munio Knoll, alias Zygmunt
Romankiewicz, defendant

by:

Martin S. Gerber

John Owen

His Attorneys

Regina Treitler, defendant

by:

B. H. Sokol

Her Attorney

Marcel M. Lutwak, defendant

by:

Leo J. Bartoline

His Attorney

1553

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

* * (Caption—No. 50 CR 464) * *

**MOTION BY DEFENDANTS, MUNIO KNOLL, alias
ZYGMUNT ROMANKIEWICZ, REGINA TREITLER
and MARCEL M. LUTWAK, IN ARREST OF JUDG-
MENT.**

Now come the defendants, Munio Knoll, alias Zygmunt Romankiewicz, Regina Treitler and Marcel M. Lutwak, by and through their respective attorneys, and move the court to arrest the judgment herein, and as grounds therefor state to the court that the indictment herein does not charge any offense under the Statutes of the United States.

Munio Knoll, alias Zygmunt
Romankiewicz, defendant

by:

Martin S. Gerber

John Owen

His Attorneys

Regina Treitler, defendant

by:

B. H. Sokol

Her Attorney

Marcel M. Lutwak, defendant

by:

Leo J. Bartoline

His Attorney

1554 And on the same day, to wit, on the 22nd day of January, 1951, being one of the days of the regular January term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to-wit:

1555

UNITED STATES DISTRICT COURT
Northern District of Illinois
Eastern Division

• • (Caption—No. 50 CR 464) • •

This cause this day coming on for hearing on the motions of the defendants Munio Knoll alias Zygmunt Romankiewicz, Marcel Max Lutwak and Regina Treitler for judgment of acquittal notwithstanding the verdict and for a new trial and for disposition on the verdict heretofore rendered by the jury finding the said defendants Munio Knoll, alias Zygmunt Romankiewicz, Marcel Max Lutwak and Regina Treitler guilty as charged in Count One of the Indictment filed herein against them comes the United States by the United States Attorney come also said defendants each in his own proper person and by his counsel and the Court having now heard the arguments of counsel and being fully advised in the premises it is

Ordered that the motions of said defendants for judgment of acquittal notwithstanding the verdict and for a new trial be and they are hereby overruled and denied thereupon said defendants enter their motion in arrest of judgment which motion is overruled and denied and said defendants enter their motions that this cause be referred to the Probation Department of this Court for a pre-sentence investigation and that said defendants be placed on probation which motions are denied and the defendants being asked by the Court if they have anything to say why the sentence and judgment of the Court should not now be pronounced upon them and showing no good and sufficient reasons why sentence and judgment should not now be pronounced it is therefore

Considered and Ordered by the Court and is the sentence and judgment of the Court upon the verdict hereto-

fore rendered by the jury finding said defendants guilty, as charged in Count One of the Indictment filed herein against them that each of said defendants Munio Knoll alias Zygmunt Romankiewicz, Marcel Max Lutwak and Regina Treitler be committed to the custody of the Attorney General of the United States or his duly authorized representative for and during a period of Two (2) Years and that each of said defendants forfeit and pay to the United States of America a fine in the sum of Ten Thousand Dollars (\$10,000.00) together with the costs and charges in this behalf expended whereupon the defendants by their counsel enter their motion for enlargement on bail pending appeal which motion is denied and the motion of said defendants for stay of execution is also denied.

John P. Barnes

United States District Judge

1556 And on the same day, to wit, the 22nd day of January, 1951, came the Defendant-Appellants; Respectively, Munio Knoll, alias Zygmunt Romankiewicz, Marcel Max Lutwak, and Regina Treitler, by their attorneys, and filed in the Clerk's office of said Court their certain Respective Notices Of Appeal in words and figures following, to wit:

1557

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

UNITED STATES OF AMERICA

vs.

MUNIO KNOLL, alias ZYGMUNT
ROMANKIEWICZ, et al

No. 50 CR 464

NOTICE OF APPEAL

Name and Address of Appellant:

Munio Knoll, alias Zygmunt Romankiewicz, 6070
Stony Island Avenue, Chicago, Illinois

Name and Address of Appellant's Attorneys:

Martin S. Gerber, One No. La Salle Street, Chicago,
Ill.

John Owen, 30 No. La Salle Street, Chicago, Illinois

Offense:

Conspiracy to defraud the United States of a governmental function and to violate the laws of the Immigration and Naturalization Service

Date of Judgment:

January 22nd, 1951.

Brief description of judgment or sentence:

That on January 22nd, 1951, the defendant herein was sentenced to: 2 years, custody of Attorney General of U. S. and fine of \$10,000.00

Name of Prison where now confined, if not on bail:

Cook County Jail.

I, the above named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Seventh Circuit, from the judgment above-mentioned, on the grounds set forth below.

Munio Knoll
Appellant

Dated: January 22nd, A. D., 1951.

1558

GROUNDS OF APPEAL

1. The verdict was contrary to the law.
2. The verdict was contrary to the evidence.
3. The court erred in giving the jury certain instructions over the objection of the defendant.
4. The court erred in refusing to give to the jury certain instructions offered on behalf of the defendant.
5. The court erred in admitting certain evidence offered by the government over the objection of the defendant.
6. The court erred in failing to dismiss the indictment herein upon the motion of the defendant.
7. The court erred in denying the motion of the defendant for judgment of acquittal at the close of the evidence on behalf of the government.
8. The court erred in refusing to enter judgment of acquittal notwithstanding the verdict.
9. The court erred in unduly restraining the defendant in cross examination of the witnesses offered on behalf of the government.

RECEIPT OF NOTICE OF APPEAL

Received a copy of the above and foregoing Notice of Appeal this 22nd day of January, A. D., 1951.

Otto Kerner, Jr.,

United States Attorney.

By Robert J. Downey

Asst. U. S. Atty.

1559

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

UNITED STATES OF AMERICA

vs.

MARCEL M. LUTWAK, et al

No. 50 CR 464

NOTICE OF APPEAL

Name and Address of Appellant:

Marcel M. Lutwak, 3543 West Madison Street, Chicago

Name and Address of Appellant's Attorney:

Leo J. Bartoline, 231 So. La Salle Street, Chicago

Offense:

Conspiracy to defraud the United States of a governmental function and to violate the laws of the Immigration and Naturalization Service

Date of Judgment:

January 22nd, 1951.

Brief description of judgment or sentence:

That on January 22nd, 1951, the defendant herein was sentenced to: 2 years in custody of the Attorney General of the United States and \$10,000 fine.

Name of Prison where now confined, if not on bail:

Cook County Jail.

I, the above named Appellant, hereby appeal to the United States Circuit Court of Appeals, for the Seventh Circuit, from the judgment above-mentioned, on the grounds set forth below.

Marcel M. Lutwak

Appellant

Dated: January 22nd, A. D., 1951.

1560

GROUNDS OF APPEAL

1. The verdict was contrary to the law.
2. The verdict was contrary to the evidence.
3. The court erred in giving the jury certain instructions over the objection of the defendant.
4. The court erred in refusing to give to the jury certain instructions offered on behalf of the defendant.
5. The court erred in admitting certain evidence offered by the government over the objection of the defendant.
6. The court erred in failing to dismiss the indictment herein upon the motion of the defendant.
7. The court erred in denying the motion of the defendant for judgment of acquittal at the close of the evidence on behalf of the government.
8. The court erred in refusing to enter judgment of acquittal notwithstanding the verdict.
9. The court erred in unduly restraining the defendant in cross examination of the witnesses offered on behalf of the government.

RECEIPT OF NOTICE OF APPEAL

Received a copy of the above and foregoing Notice of Appeal this 22nd day of January, A. D., 1951.

Otto Kerner, Jr.

United States Attorney.

By Robert J. Downey

Asst. U. S. Atty.

1561

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

UNITED STATES OF AMERICA

vs.

REGINA TREITLER, et al

No. 50 CR 464

NOTICE OF APPEAL

Name and Address of Appellant:

Regina Treitler, 35 South Central Park Avenue,
Chicago, Illinois

Name and Address of Appellant's Attorney:

Bernard H. Sokol, 11 So. La Salle Street, Chicago, Ill.

Offense:

Conspiracy to defraud the United States of a governmental function and to violate the laws of the Immigration and Naturalization Service

Date of Judgment:

January 22nd, 1951:

Brief description of judgment or sentence:

That on January 22nd, 1951, the defendant herein was sentenced to: 2 yrs. & \$10,000

Name of Prison where now confined, if not on bail:

Cook County Jail.

I, the above named Appellant, hereby appeal to the United States Circuit Court of Appeals, for the Seventh Circuit, from the judgment above-mentioned, on the grounds set forth below.

Regina Treittler

Appellant

Dated: January 22nd, A. D., 1951.

1562

GROUND OFS OF APPEAL

1. The verdict was contrary to the law.
2. The verdict was contrary to the evidence.
3. The court erred in giving the jury certain instructions over the objection of the defendant.
4. The court erred in refusing to give to the jury certain instructions offered on behalf of the defendant.
5. The court erred in admitting certain evidence offered by the government over the objection of the defendant.
6. The court erred in failing to dismiss the indictment herein upon the motion of the defendant.
7. The court erred in denying the motion of the defendant for judgment of acquittal at the close of the evidence on behalf of the government.
8. The court erred in refusing to enter judgment of acquittal notwithstanding the verdict.
9. The court erred in unduly restraining the defendant in cross examination of the witnesses offered on behalf of the government.

RECEIPT OF NOTICE OF APPEAL

Received a copy of the above and foregoing Notice of Appeal this 22nd day of January, A. D., 1951.

Otto Kerner, Jr.

United States Attorney.

By Robert J. Downey

Asst. U. S. Atty.

(Certificate of mailing attached hereto)

1563

United States of America

Northern District of Illinois

} ss:

• • (Caption—No. 50 CR 464) • •

CERTIFICATE OF MAILING

I, Roy H. Johnson, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that on January 22, 1951, in accordance with Rule 73(b) of the Federal Rules of Civil Procedure, a copy of the foregoing Notices of Appeal was mailed to:

Hon. Otto Kerner Jr.

U. S. Attorney

450 U. S. Court House

Chicago 4, Illinois

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 22nd day of January, 1951.

Roy H. Johnson

By Gizella Butcher

Clerk.

Deputy Clerk

(Seal)

1569 And the same day, to wit, the 15th day of February, 1951, came the Appellants by their attorneys and filed in the Clerk's office of said Court their certain Statement Of Points in words and figures following, to wit:

1570

Appeal to the United States Court of Appeals
For the Seventh Circuit
From the
UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

* * (Caption—No. 50 CR 464) * *

STATEMENT OF POINTS
TO BE RELIED UPON BY APPELLANTS
ON APPEAL

The points upon which Appellants intend to rely for purposes of this appeal are as follows:

1. The Court erred in denying defendants' motions to dismiss Count I of the indictment.

2. The Court erred in unduly restricting the cross-examination of government witness Maria Lutwak.

3. The Court erred in permitting government witness Maria Lutwak to testify over the objection of defendants that she was incompetent as being the wife of one of the defendants, and in refusing a voir dire examination with respect thereto.

4. The Court erred in allowing the government latitude in the redirect examination of government witnesses Ann Zapler and Mrs. Louis Wicker far beyond the scope of cross-examination.

5. The Court erred in admitting improper testimony with respect to acts and declarations of the defendants occurring and taking place after the alleged illegal entry of the aliens into the United States and after the termination of the alleged conspiracy.

6. The Court erred in allowing the government to impeach its own witness, Maria Lutwak, through the testimony of government witness Morris Haberman.

1571 7. The Court erred in permitting government witness Bess Osborne to testify over the objection of de-

defendants that she was incompetent as being the wife of one of the defendants, and in refusing a voir dire examination with respect thereto.

8. The Court erred in permitting Grace Klemtner Knoll to testify over the objection of defendants that she was incompetent as being the wife of one of the defendants, and in refusing a voir dire examination with respect thereto.

9. The Court erred in calling Grace Klemtner Knoll as a Court's witness and in permitting the government to cross-examine and impeach her.

10. The Court erred in calling Grace Klemtner Knoll as a Court's witness at the suggestion of the government, under circumstances in which both the government and the Court were aware of the status of Grace Klemtner Knoll as a former defendant and of the likelihood that she would be required to claim her privilege against self-incrimination on the stand, thereby prejudicing the defendants.

11. The Court erred in denying defendants' motions for a mistrial.

12. The Court erred in permitting all the testimony of government witnesses Ann Zapier, Maria Lutwak, Jane Turner, and Mrs. Louis Wicker to be considered against all the defendants.

13. The Court erred in permitting testimony of government witnesses Joseph Ludmer and Morris Haberman to be considered against all the defendants.

14. The Court erred in the admission of prejudicial and immaterial testimony, and in permitting it to be considered against all the defendants.

15. The Court erred in the admission of prejudicial and immaterial exhibits, and in permitting them to be considered against all the defendants.

1572 16. The Court erred in the admission of testimony of acts and declarations of defendants against alleged co-conspirators, which acts and declarations were not in furtherance of the conspiracy or the common design.

17. The Court erred in unduly restricting the efforts of defendants to show bias, prejudice, and hostility on the part of government witness Joseph Ludmer.

18. The Court erred in overruling defendants' motions for acquittal as to Count I.

19. The Court erred in denying defendants' motions for a new trial.

20. The Court erred in denying defendants' motions in arrest of judgment.

21. The Court erred in denying defendants' motions for acquittal notwithstanding the verdict.

22. The Court erred in declining to give timely warning to witnesses Maria Lutwak and Grace Klemtnr Knoll as to their constitutional privileges against self-incrimination.

23. The Court erred in giving instruction No. 22 proposed by the government, which instruction reads:

"The marriage of a man and woman where one of the parties thereto has a husband or wife by a prior marriage who is then living and undivorced is void."

24. The evidence is insufficient to support the charge contained in the indictment, in that the government failed to prove the invalidity of any of the marriages entered into by the various defendants under the law of the place where contracted, namely, France.

February 15, 1951

A. Bradley Eben

Richard F. Watt

Bernard Weissbourd

Attorneys for Defendants-Appellants

1573. Received a copy of the above Statement of Points to be Relied upon by Appellants on Appeal this 15th day of February, 1951.

Otto Kerner, Jr.

United States Attorney

By Robt. J. Downey

Appellants' Designation of Record

1574 And afterwards on, to wit, the 15th day of February, 1951, came the Appellants by their attorneys and filed in the Clerk's office of said Court their certain Designation Of Contents Of Record On Appeal, in words and figures following to wit:

1575

Appeal to the
UNITED STATES COURT OF APPEALS
For the Seventh Circuit

From the
UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

(Caption—No. 50 CR 464)

APPELLANTS' DESIGNATION OF
CONTENTS OF RECORD ON APPEAL

To: Clerk of the United States District Court for the Northern District of Illinois, Eastern Division.

Please prepare a transcript of record to be certified and transmitted to the United States Court of Appeals for the Seventh Circuit pursuant to the Notices of Appeal heretofore filed in the above entitled cause. In compliance with the Rules of Criminal Procedure for the District Courts of the United States, defendants in the above entitled cause, as appellants, designate the following portions of the record to be incorporated into the transcript:

1. Indictment No. 50 CR 464, returned by the July 1950 Grand Jury on August 7, 1950.

2. The motions of defendant Regina Treitler and defendants Leopold Knoll and Grace Klemtnier Knoll to dismiss Count I of the indictment, and the adoption of said motions by the other defendants.

3. The pleas of not guilty entered by each and every defendant on October 9, 1950.

4. Order of court of November 27, 1950, denying defendants' motions to dismiss Count I.

1576 5. All transcripts of proceedings from January 8, 1951, through January 17, 1951, with the exception of the following pages:

(a) last 5 lines of page 69, all of pages 70-74 inclusive, and the first 8 lines of page 75.

(b) all of pages 79 and 80, and the first 13 lines of page 81.

(c) last 4 lines of page 148, all of pages 149-151 inclusive, and the first 14 lines of page 152.

(d) last 21 lines of page 230, and all of pages 231-449 inclusive.

(e) last 6 lines of page 450, and all of pages 451-461 inclusive.

(f) last 6 lines of page 570, and all of pages 571-675 inclusive.

(g) all of pages 750-752 inclusive, and the first 14 lines of page 753.

(h) last 6 lines of page 859, and all of pages 860-913 inclusive.

(i) last 4 lines of page 914, all of pages 915-1008 inclusive, and the first 21 lines of page 1009.

(j) last 16 lines of page 1033, all of pages 1034-1147 inclusive, and the first 2 lines of page 1148.

(k) all of page 1152.

(l) last 8 lines of page 1154, and all of pages 1155-1168 inclusive.

(m) last 4 lines of page 1178, and all of pages 1179 through to the end of the transcript.

6. Government instruction No. 22 given by the court to the jury on January 18, 1951.

7. The verdicts returned on January 18, 1951.

1577 8. Order of court of January 19, 1951, entering the verdicts finding the defendants Munio Knoll, Marcell Max Lutwak, and Regina Treitler guilty as charged in Count I of the indictment.

9. Order of court of January 15, 1951, dismissing Counts II, III, IV, V, and VI for want of proper venue, and denying defendants' motions for judgment of acquittal as to Count I.

10. Defendants' motion for new trial.

11. Defendants' motion for judgment of acquittal notwithstanding the verdict.

12. Defendants' motion in arrest of judgment.

13. Order of court of January 23, 1951, denying defendants' motions for acquittal notwithstanding the verdict.

for a new trial, and in arrest of judgment, and denying defendants' motions for referral to the probation department for presentence investigation and for the placement of defendants on probation, and sentencing each of the defendants, Munio Knoll, Marcel Max Lutwak, and Regina Treitler, to two years imprisonment and a fine of \$10,000.

14. Notice of appeal of defendant Munio Knoll dated January 22, 1951, and proof of service.

15. Notice of appeal of defendant Marcel Max Lutwak dated January 22, 1951, and proof of service.

16. Notice of appeal of defendant Regina Treitler dated January 22, 1951, and proof of service.

17. This designation of contents of record on appeal and proof of service.

18. In their original form all exhibits received in evidence.

19. Draft order directing the clerk to transmit exhibits in their original form, entered February 15, 1951.

20. Draft order of January 26, 1951, extending until February 16, 1951, the time within which defendants may file their designation of contents of record on appeal.

1578 21. Statement of points to be relied upon by appellants and proof of service.

22. Clerk's certificate.

23. Such other matters as by law you are required to certify.

Dated: February 15, 1951

A. Bradley Eben

Richard F. Watt

Bernard Weissbourd

Attorneys for Defendant-Appellants

Received a copy of the above Designation of Contents of Record on Appeal this 15 day of February, 1951.

Otto Kerner, Jr.

United States Attorney

By Robt. J. Downey

1579 And on the same day, to wit, on the 15th day of February, 1951, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Philip L. Sullivan District Judge, appears the following entry, to wit;

1580

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

* * (Caption—No. 50 CP 464) * *

O R D E R

This cause coming on to be heard on the motion of defendants and due notice having been given by defendants of their taking of an appeal from the judgments heretofore entered herein,

It Is Hereby Ordered that the clerk of this court is directed to transmit to the clerk of the Court of Appeals for the Seventh Circuit in their original form all the exhibits introduced by the government and by the defendants and admitted into evidence in the trial of this cause.

It Is Further Ordered that copies which have been or may hereafter be substituted for original documents pursuant to leave of court shall be deemed to be in original form within the meaning of this order.

Enter: Philip L. Sullivan

Dated: February 15, 1951

380 *Appellees' Supplemental Designation of Record*

1581 And afterwards on, to wit, the 21st day of Feb-
ruary, 1951, came the Appellee by its attorneys and
filed in the Clerk's office of said Court its certain Supple-
mental Designation Of Record And Proceedings To Be In-
cluded In Record On Appeal in words and figures follow-
ing, to wit:

1582

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

* * * (Caption—No. 50 CR 464) * *

APPELLEES' SUPPLEMENTAL DESIGNATION
OF RECORD AND PROCEEDINGS TO BE IN-
CORPORATED IN RECORD ON APPEAL

To The Clerk Of This Court:

The appellants, Munio Knoll, et al., in the above-entitled cause, have previously designated certain portions of the record and proceedings in said cause to be contained in the record on appeal in the United States Court of Appeals, Seventh Circuit. The appellee, the United States Government, plaintiff in the above-entitled cause, hereby respectfully requests that the appellants' designation of record and proceedings be supplemented in the following respect:

1. Appellees' designation of record item No. 5 should be amended to read, as follows: All transcripts of proceedings in the said cause for the dates January 8, 9, 10, 11, 12, 15, 16, 17, & 18, 1951; that is to say, the entire transcript of record from page 1 through page 1474.
2. Appellees' designation of record item No. 9 should be amended in that the date of the order of court is January 16, 1951 in lieu of January 15, 1951.
3. Appellees' designation of record item No. 13 should be amended in that the date of the order of court is January 22, 1951 in lieu of January 23, 1951.
4. Appellees' designation of record item No. 11 should be eliminated because it is an "oral" order and as such is incorporated in other items designated by the defendant-appellants.

1583 5. That appellees' designation of record item No. 18 should be modified so as to designate the exhibits as: Government Exhibits Nos. 1 through 28; defendant Munio Knoll's Exhibits Nos. A and B, with interpretation and translation of defendant Munio Knoll's Exhibit A, which said translation was provided by the Government.

6. Order of court entered January 17, 1951 denying defendants' motion for judgment of acquittal as to Counts 2, 3, 4, 5 and 6; defendants rest; both sides rest; etc.

7. Defendants' instructions a, b, c, g, i, j, n, q, s, t, u, and x as offered by the defendants and as given by the court to the jury on January 18, 1951.

8. Notice of Appeal of the United States of America, dated February 12, 1951.

9. Statement of points to be relied upon by the United States of America on appeal as to dismissal of Counts 2, 3, 4, 5 and 6, dated February.....

Otto Kerner, Jr.

Otto Kerner, Jr.

United States Attorney

1587 And afterwards, to wit, on the 23rd day of February, 1951, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Phillip L. Sullivan, District Judge, appears the following entry, to wit:

1588

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

* * (Caption—No. 50 CR 464) * *

O R D E R

The Court being fully advised in the premises, it is Ordered that the motion of the plaintiff to have the Designation and Supplemental Designation of Record heretofore filed in this Court by the parties hereto in the appeal to the Court of Appeals of the defendants Munio Knoll, Regina Treitler and Marcel Max Luiwak in the said matter be and the same are hereby made by designated as the

Clerk's Certificate

Contents of the Record in the appeal to the Court of Appeals by the United States of America in the said matter.

It Is Further Ordered that the Clerk of the District Court shall prepare in both of the said appeals a single transcript of record to be forwarded in both appeals to the Court of Appeals; that further the printed record of appeal on behalf of the defendants Munio Knoll, Regina Treitler and Mareel Max Lutwak be and the same is hereby designated as the printed record of appeal for the United States of America in their appeal in the said matter.

Enter:

Philip L. Sullivan
Judge

1589

United States of America }
Northern District of Illinois } ss:

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with the Appellants' Designation and Appellee's Supplemental Designation filed in this Court in the cause entitled: United States of America, Plaintiff, vs. Munio Knoll, alias Zygmunt Romankiewicz, Marcel M. Lutwak, Regina Treitler, Leopold Knoll, and Grace Klemtner alias Grace Klemtner Knoll, Defendants, No. 50 CR 464, as the same appear from the original records and files thereof now remaining among the records of the said Court in my office, except the Original Exhibits which are incorporated herein by direction of this Court.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 2nd day of March, 1951.

Roy H. Johnson
Clerk

Gizella Butcher
Deputy Clerk

(SEAL)

1590

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit

(Caption—Nos. 10326, 10327, 10328)

NOTICE UNDER RULE 14
WITH RESPECT TO PRINTING OF RECORD ON
APPEAL

To Clerk of United States Court of Appeals for the
Seventh Circuit:

Please take notice that pursuant to Rule 14 of the Rules of the United States Court of Appeals for the Seventh Circuit the defendants-appellants hereby state that it is their intention and desire to print the record through a printer of their own designation and to supervise said printing themselves. For this purpose the defendants-appellants state that they are designating the Scheffer Law Printing Company, 118 South Clinton Street, Chicago, Illinois, as their printer, and they hereby authorize the Scheffer Law Printing Company to withdraw the transcript of record from the office of the Clerk of the United States Court of Appeals for the Seventh Circuit.

Please take notice further that the defendants-appellants hereby designate the following portions of the record to be printed:

1. The portions of the record required by subparagraph "a" of Rule 14.

2. All the balance of the record, other than the transcript of proceedings, with the exception of the following:

(a) Notice of appeal by the United States dated February 12, 1951.

1591

(b) Government Exhibits 1-28 inclusive admitted into evidence and Munio Knoll's Exhibits A and B, and the translation of Exhibit A, admitted into evidence.

(c) The statement of points to be relied upon by the United States on appeal as to the dismissal of Counts II, III, IV, V, and VI.

(d) The draft order of January 26, 1951, extending until February 16, 1951, the time within which defendants may file their designation of contents of record on appeal.

384 *Notice Under Rule 14 re Printing of Record*

3. The transcript of proceedings for the dates January 7, 8, 9, 10, 11, 12, 15, 16, 17, and 18, 1951, with the exception of the following lines and pages:

- (a) last 4 lines of page 148, all of pages 149-151 inclusive, and the first 14 lines of page 152.
- (b) last 21 lines of page 230, and all of pages 231-449 inclusive.
- (c) last 6 lines of page 450, and all of pages 451-461 inclusive.
- (d) last 9 lines of page 570, and all of pages 571-610 inclusive, and the first 16 lines of page 611.
- (e) last 8 lines of page 614, and all of pages 615-669 inclusive.
- (f) last 2 lines of page 670, and all of pages 671-675 inclusive.
- (g) last 18 lines of page 750, all of pages 751 and 752, and the first 14 lines of page 753.
- (h) last 6 lines of page 859, and all of pages 860-911 inclusive, and the first 15 lines of page 912.
- (i) last 4 lines of page 916; all of pages 917-956 inclusive, and the first 4 lines of page 957.
- (j) last 7 lines of page 957, all of pages 958-1008 inclusive, and the first 21 lines of page 1009.

1592

- (k) last 16 lines of page 1033, all of pages 1034-1147 inclusive, and the first 2 lines of page 1148.
- (l) last 4 lines of page 1223, all of pages 1224-1314 inclusive.
- (m) last 5 lines of page 1315, all of pages 1316-1425 inclusive.

And please take notice further that in connection with their appeals and with this designation of the portions of the record to be printed on appeal, the defendants-appellants do not intend to and will not rely on or make any point with respect to any error as to the admission into evidence of any of government exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, except insofar as defendants-appellants contend, and reserve their right to urge on appeal, that some one or more of said exhibits was improperly admitted as against all of the defendants. This statement is made with particular reference to the wording of Points 5, 14, 15, 16, and 24 of the statement of points to be relied upon by appellants on appeal heretofore filed and incorporated into the rec-

ord. The purpose of this statement is thus to clarify the points upon which appellants do rely, and particularly to indicate the reason why appellants do not believe that the testimony of government witnesses Sigurdson, Lawson, Plzak, Osterkorn, Alfano, Hansen, Connolly, and Stern, need be printed for a proper consideration of the questions presented by appellants' appeals. The testimony of these witnesses has therefore been omitted from the portions of the transcript of proceedings to be printed on appeal, such testimony appearing on the last 21 lines of page 230 and on all of pages 231 to 449 inclusive.

A. Bradley Eben
Richard F. Watt
Bernard Weissbourd
Attorneys for Defendants-Appellants

1593

A. Bradley Eben
208 South La Salle Street
Central 6-1763
Richard F. Watt
Board of Trade Building
Harrison 7-2195
Bernard Weissbourd
135 South La Salle Street
Financial 6-3535

Received a copy of the above notice this 16th day of March, 1951.

Otto Kerner, Jr.
United States Attorney
per Edw. J. Ryan
Asst. U. S. Atty.

1594

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit

• • (Caption—Nos. 1326, 1327, 1328) • •

PLAINTIFF-APPELLEE'S SUPPLEMENTAL
DESIGNATION OF PRINTING OF RECORD
ON APPEAL

To Clerk of The United States Court of Appeals For
The Seventh Circuit:

The defendants-appellants have heretofore filed pursuant to Rule 14 their designation of the portion of the record in the above-captioned matters to be printed in accordance with the provision of Rule 14(b) of this Court. The plaintiff-appellee hereby designates the following additional portion of the record to be printed in connection with the printing of the record in the above-captioned matters.

1. The portion of the Transcript of Proceedings for January 10, 1951 commencing with page 405 through page 436.

UNITED STATES OF AMERICA,

Plaintiff-Appellee

By Otto Kerner, Jr.,
United States Attorney.

U. S. C. A.-7

Filed March 23, 1951

Kenneth J. Carrick, Clerk.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit,
Chicago 10, Illinois.

I, Kenneth J. Carrick, Clerk of the United States Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the printed transcript of record, filed June 1, 1951, in:

Cause No. 10326.

The United States of America,
Plaintiff-Appellee,

vs.

Marcel Max Lutwak,
Defendant-Appellant.

Cause No. 10327.

The United States of America,
Plaintiff-Appellee,

vs.

Munio Knoll,
Defendant-Appellant.

Cause No. 10328.

The United States of America,
Plaintiff-Appellee,

vs.

Regina Treitler,
Defendant-Appellant.

as the same remains upon the files and records of the United States Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Court of Appeals for the Seventh Circuit, at the City of Chicago, this 2nd day of May, A. D. 1952.

(Seal)

Kenneth J. Carrick,
*Clerk of the United States Court of
Appeals for the Seventh Circuit.*

At a regular term of the United States Court of Appeals for the Seventh Circuit, held in the City of Chicago and begun on the second day of October, in the year of our Lord one thousand nine hundred and fifty-one, and of our Independence the one hundred seventy-sixth:

10326 The United States of America,
Plaintiff-Appellee,
vs.
 Marcel Max Lutwak,
Defendant-Appellant.

10327 The United States of America,
Plaintiff-Appellee,
vs.
 Manio Knoll,
Defendant-Appellant.

10328 The United States of America,
Plaintiff-Appellee,
vs.
 Regina Treitler,
Defendant-Appellant.

Appeals from the
 United States District Court for the
 Northern District
 of Illinois, Eastern
 Division.

And afterwards, to-wit, on the fifth day of December, 1951, the following further proceedings were had and entered of record, to-wit:

UNITED STATES COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

Wednesday, December 5, 1951.

Before:

Hon. J. Earl Major, Chief Judge.
Hon. F. Ryan Duffy, Circuit Judge.
Hon. Walter C. Lindley, Circuit Judge.

10326 The United States of America,
Plaintiff-Appellee,
vs.
Marcel Max Lutwak,
Defendant-Appellant.

10327 The United States of America,
Plaintiff-Appellee,
vs.
Munio Knoll,
Defendant-Appellant.

10328 The United States of America,
Plaintiff-Appellee,
vs.
Regina Treitler,
Defendant-Appellant.

Appeals from the
United States Dis-
trict Court for the
Northern District
of Illinois, East-
ern Division.

Now this day come the parties by their counsel, and this cause comes on to be heard on the transcript of record and on the briefs of counsel and on oral argument by Mr. A. Bradley Eben, counsel for the appellants, and by Mr. James B. Parsons, counsel for the appellee, and the Court takes this matter under advisement.

And afterwards, to-wit, on the third day of January, 1952, there was filed in the office of the Clerk of this Court the opinion of the Court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

October Term and Session, 1951.

10326 The United States of America,
Plaintiff-Appellee,
vs.

Marcel Max Lutwak,
Defendant-Appellant.

10327 The United States of America,
Plaintiff-Appellee,
vs.

Munio Knoll,
Defendant-Appellant.

10328 The United States of America,
Plaintiff-Appellee,
vs.

Regina Treitler,
Defendant-Appellant.

Appeals from the
United States Dis-
trict Court for the
Northern District
of Illinois, East-
ern Division.

January 3, 1952.

Before MAJOR, Chief Judge, DUFFY and LINDLEY, Circuit Judges.

LINDLEY, Circuit Judge. Marcel Max Lutwak, Munio Knoll, alias Zygmunt Romankiewicz, and Regina Treitler were indicted jointly with Leopold Knoll, who was found not guilty, and Grace Klemtner, dismissed by the court, upon a count charging conspiracy to commit offenses against the United States, that is, to violate Sections 180a

and 220(c), Title 8 U. S. C., each of which forbid obtaining entry into the United States by a willfully false or misleading representation, statement or document required by the immigration laws; and to defraud the United States of its governmental functions and its right to administer its immigration laws, by effectuating the illegal entry of three aliens into the United States as spouses of United States citizens having honorable discharges from service in the Armed Forces of the United States during the Second World War, as provided by Section 232, Title 8 U. S. C. commonly known as the War Bride Act. Counts charging substantive offenses and aiding and abetting were dismissed for lack of proof or proper venue. Lutwak, Knoll and Treitler were found guilty and sentenced by the court and have perfected this appeal. We are concerned only with the charge of conspiracy and the proceedings thereunder.

In substance the conspiracy count charged that the parties conspired to have Marcel Lutwak, Bessie Osborne and Grace Klemtner, each of whom was an honorably discharged veteran of the Second World War, proceed to Paris, France, and there falsely pretend to marry respectively Maria Knoll, Munio Knoll and Leopold Knoll, all three of whom were of foreign nationality, and to bring them into this country as spouses of the veterans and thus to violate the immigration quota laws. It is readily apparent that an essential element of the crime charged lay in the averment that the three Parisian ceremonies were in fact not true marriages but spurious in character, for, if valid marriages came into being, the fact that the motives back of them were entries into this country would be wholly immaterial. Consequently, the contest in the trial court centered largely about these two factual questions, viz., did defendants conspire and, if so, did the government prove by competent evidence that the marriages were in fact invalid.

In so far as the issue of common purpose and design is concerned, we think it clear that the court properly overruled the motion for acquittal and submitted the issue to the jury. The evidence, in its aspects most favorable to the government, warranted a jury finding that the following are the facts. Regina Treitler, a sister of Munio Knoll and Leopold Knoll and an aunt of Marcel Lutwak, in 1947 was living in Chicago; her nephew Lutwak also lived in that city. The two male Knolls, brothers of Treitler and uncles of Lutwak, were in Paris. Maria Knoll was likewise in

Paris. She had been married to Munio Knoll in 1932.¹ Mrs. Treitler, in the summer of 1947, inquired of a friend, Anne Zapler, whether the latter knew of veteran girls who would be willing to go to Europe to marry her brothers and bring them to the United States, telling her that they had been in concentration camps and were in a sorry plight. Mrs. Treitler said that "they" wanted someone who had been in service; that she would see that the girls' ways were paid; that the marriages need not be consummated, and that divorces could be obtained after six months. Lutwak also talked to Mrs. Zapler about the suggested action. Following these conversations, in September, Mrs. Zapler introduced Bessie Osborne to Lutwak as an ex-Wave, who, later the same month, told Mrs. Zapler that Osborne had consented to go and that "they" were happy about it. During the summer, in August, Lutwak went to Paris, there married his aunt, Marie Knoll, the undivorced or divorced wife of his Uncle Munio, and brought her to America as a war bride, leaving her husband or former husband, his uncle, in Paris with his brother, Leopold Knoll, who had been present at this ceremony. Shortly later Lutwak told Mrs. Zapler that Bessie Osborne had consented to go to Paris. Mrs. Treitler also talked to Grace Klemtner, telling her that she, Treitler, was going to Paris, and proposed that Grace do likewise.

Lutwak told Osborne that his family wanted to bring his Uncle Leopold to the United States; that he was in search of a woman who had been in service to marry this uncle and bring him into this country; that he would pay \$1,000 and that within six months she could have a divorce. Treitler told her substantially the same. Lutwak also said to her than he had another uncle in Paris, Munio Knoll, who was married and whose wife was in America and that the family wanted to effectuate a reunion between the two. We bear in mind that shortly before that time, Lutwak had gone through a marriage ceremony with Marie, his aunt, whom, he told Osborne, he desired to reunite with her husband, his Uncle Munio, by bringing the latter to America. He then asked Osborne if she would marry Munio instead of Leopold. He agreed to pay her \$500, and did pay for clothes she bought for the trip. What we have recounted is not a complete narration of all the facts and

1. Whether she had been legally divorced from him is not determinable from the record.

circumstances of record up to November 1, 1947, but will serve as a brief resume of the salient essentials.

Following the events related, Mrs. Treitler and Bessie Osborne went, on October 25, 1947, by airplane, to Paris, where, for the first time, Osborne met Munio Knoll. On November 3, she participated in a marriage ceremony with him. The two remained in Paris, living at different places, until November 12, 1947, when, after having ostensibly complied with the requirements of the War Bride Act, they left Paris by airplane for Chicago. Before they left, Treitler promised Osborne \$1,000. During her stay in Paris, Osborne attended the marriage ceremony of Grace Klemtner and Leopold Knoll, the latter of whom Lutwak had first suggested she marry. Upon her return to Chicago, Lutwak, in Munio's presence, gave her a check for \$1,000.

On November 1, 1947, one week after Treitler and Osborne left this country, Grace Klemtner followed them by air. She took with her her discharge from the army. There on November 2 or 3, she met, for the first time, Leopold Knoll. On November 6, she married him. While in Paris, she and Leopold lived at different hotels; and, very shortly, she proceeded, unaccompanied, to England for a short visit. She returned to New York in December, 1947. Leopold entered New York under the provisions of the War Bride Act, in early December 1947. The two did not live together. She proceeded immediately to California where she remained until she appeared before the grand jury in Chicago, about April 1, 1950. After that time, she testified, she lived with him.

From this evidence the jury was fully justified in finding that a concerted scheme was hatched in the summer of 1947 by the prime movers, Lutwak and Treitler, whereby they would obtain, by means of marriages with the three veterans, entry of their three relatives into this country; that this plan sprang from the brains of the two and was communicated to and joined by the girls and the aliens; that it culminated in the entries claimed to be illegal. Here was evidence of a common design, carried into execution by the interrelated, coordinated conduct of the several parties, who progressively pursued the one object. In the face of this evidence, we can not say, as a matter of law, that there was more than one scheme, for it was sufficient to justify the jury in finding that there was one over-all common design and purpose. Thus, in *Braverman v. United*

States, 317 U. S. 49, the court, at page 54, said: "The allegations in a single count of a conspiracy to commit several crimes is not duplicitous, for 'The conspiracy is the crime, and that is one, however diverse its objects.' *Frohwerk v. United States*, 249 U. S. 204, 210; *Ford v. United States*, 273 U. S. 593, 602; *United States v. Manton*, 107 F. 2d 834, 838. A conspiracy is not the commission of the crime which it contemplates, and neither violates nor 'arises under' the statute whose violation is its object. *United States v. Rabinowich*, *supra*, 87-89; *United States v. McElwain*, 272 U. S. 633, 638; see *United States v. Hirsch*, 100 U. S. 33, 34, 35. Since the single continuing agreement, which is the conspiracy here, thus embraces its criminal objects, it differs from successive acts which violate a single penal statute and from a single act which violates two statutes. See *Blockburger v. United States*, 284 U. S. 299, 301-4; *Albrecht v. United States*, 273 U. S. 1, 11-12." See also *Blumenthan v. United States*, 332 U. S. 539, 558; *Ford v. United States*, 273 U. S. 593, 602; *United States v. Rabinowich*, 238 U. S. 78, 87-89; *United States v. Coplon* (D. C., N. Y.), 88 F. Supp. 912. The evidence relied upon by the government reflected substantial basis for the finding of the jury, which necessarily determined by its verdict that the defendants understood and knowingly participated in a coordinated scheme of conduct. Thus, as the Supreme Court said in *American Tobacco Company v. United States*, 328 U. S. 781, 809-810, "Where the circumstances are such as to warrant a jury in finding that the conspirators had a unity of purpose or a common design and understanding, or a meeting of minds in an unlawful arrangement, the conclusion that a conspiracy is established is justified." See also *United States v. Masonite Corporation*, 316 U. S. 265, 275; *United States v. Mack* (C. A. 2d), 112 F. 2d 290, 292-293; *United States v. Harrison*, CA-3, 121 F. 2d 930, 934; *Allen v. United States*, CA-7, 4 F. 2d 688, 691.

However, before the jury could properly conclude that the scheme became an illegal conspiracy, it was necessary that the evidence be sufficient to justify a conclusion that the three marriages were void,—of no legal effect, and that they were so intended, for, if they were valid, the government cannot complain. In other words, whatever the motives of the participating parties in getting married, if they had bona fide intentions to enter into the marital relation, they had a perfect right to invoke the provisions of the War Bride Act in gaining access to this country. We are

confronted, then, with the crucial question of whether the evidence justified a finding that the so-called marriages were void.

A sham marriage, void under the law of this country as against public policy, can have no validity. *Lincoln v. Riley*, 217 Ill. App. 571. In the language of the Second Circuit, in *United States v. Rubenstein*, 151 F. 2d 915 (CA-2), where the court cites many authorities: "Mutual consent is necessary to every contract; and no matter what forms or ceremonies the parties may go through indicating the contrary, they do not contract if they do not in fact assent, which may always be proved. * * * Marriage is no exception to this rule: a marriage in jest is no marriage at all." The court proceeded: "if the spouses agree to a marriage only for the sake of representing it as such to the outside world and with the understanding that they will put an end to it as soon as it has served its purpose to deceive, they have never really agreed to be married at all. They must assent to enter into the relation as it is ordinarily understood, and it is not ordinarily understood as merely a pretense, or cover, to deceive others." Furthermore a marriage void ab initio is void for all purposes and has no standing in court. *McCullen v. McCullen*, 147 N. Y. S. 1069, 1071; *Hooper v. McCaffery*, 83 Ill. App. 341, 356-357; *McClurg v. Terry*, 21 N. J. Eq. 225.

Bearing in mind the principles enunciated, we examine briefly the evidence bearing upon this issue. The intent of the parties is largely reflected by what we have said as to their actions culminating in the entries into the United States. We have seen the design of Treidler and Lutwak to send veterans, including Lutwak himself, to Europe to marry their three relatives and bring them in as spouses of those veterans; we have observed their statements to the two women, Osborne and Klemtnier, that they would be paid for their services, that the marriages need not be consummated, that they could obtain divorces within six months, that Lutwak proposed at first that one girl marry one uncle and later suggested that she marry the other one; that he suggested that one uncle, Munio, be brought to America to reunite with his wife, though shortly before, Lutwak, a veteran, had himself gone through a marriage ceremony with that wife and brought her from Europe as a war bride, and that the girls knew their proposed bridegrooms not at all. In addition, there was evidence that Maria, after entry as the purported bride of Lutwak,

lived with her former husband Munio after he was brought in, though the latter had gone through a purported marriage with Osborne, and after she, Maria had herself, gone through a purported ceremony with Lutwak; that she was later divorced from Lutwak; that Osborne never lived with her purported husband, Munio Knoll; that about six months after their purported marriage, when she proposed divorce, he asked her to wait until he could be naturalized; that, finally, despite his request in November, 1950, she filed suit for divorce, which he requested her to delay until after the trial of this cause; that Klemtner, (called as a court witness), testified that she never received a wedding ring from Leopold; that she and he lived separate and apart in Paris and in America, until she appeared as a witness before the grand jury in 1950, when, for some unexplained reason, she began to live with him. Many circumstances corroborating or cumulative to the foregoing appear in the record.

In the present case the court charged the jury fully and correctly as to the law, substantially in the words quoted from *United States v. Rubenstein, supra*, and advised the jurors that it was a question of fact for them to determine from the evidence whether at the times the aliens entered the United States the respective parties were in fact married and were entering as man and wife, and that, in determining that question, they should bear in mind the legal principles mentioned. By its verdict the jury has settled the question.

Defendants assert error in the admission of the testimony of the three alleged wives on the ground that the spouse of a defendant in a criminal cause is incompetent. Obviously, if it were undisputed that the three marriages were in fact valid, the witnesses were incompetent; but, as we have shown, the question of whether those marriages were in fact valid or invalid was controverted. The court carefully advised the jury that it was a question of fact for it to decide from all the evidence. It instructed the jurors at length concerning the essentials of such proof, so that they were fully informed that it was necessary for them to determine, before they could arrive at a verdict of guilty, that the marriages were invalid. By its verdict, they were invalid. Hence, it is established that no one of the then so-called wives was in fact married to any one of the three men; that, in each instance, the two participants in the ceremony were never actually husband and wife, but

that each marriage was void and spurious. Consequently the women were not incompetent witnesses.

Defendants insist that the court should have charged the jury that there is a presumption of validity of a marriage. But when validity is denied and attacked by affirmative evidence of invalidity, whether the presumptions have been overcome becomes a question of fact for the jury. *Hooper v. McCaffery*, 83 Ill. App. 341.

Defendants urge that the court erred in calling Grace Klemtner as a court witness and in permitting the government to cross-examine her. In the course of the trial, the United States Attorney said to the court that Grace Klemtner, who, it had been alleged had gone through a marriage ceremony with defendant Leopold Knoll and "is a person who could be considered as a witness" was present but that the government would not vouch for her truthfulness and veracity and did not desire to put her on the stand as its witness and asked whether the court felt it should call her. The court remarked that she had been a defendant whose constitutional rights he thought had been invaded and that he had accordingly discharged her, but that the evidence indicated that she was a witness to certain things in which the court was directly concerned and that, therefore, it should and would call her as its witness.

We see no error in this respect. Indeed, it is generally recognized that where there is a witness to a crime for whose veracity and integrity the prosecuting attorney is not willing to vouch, he is not compelled to call the witness, but that the court, in its discretion, may do so and allow cross-examination by both sides within proper bounds. This rule was expounded at some length in the case of *Litsinger v. United States*, 44 F. 2d 45 (CA-7), and in *Chalmette Petroleum Corp. v. Chalmette Oil Dist. Co.*, 143 F. 2d 826 (CA-5); what is said there is controlling here.

Defendants insist that the court unduly restricted their cross-examination of the witnesses Joseph Ludmer and Maria Knoll. In examining the latter, the government did not carry its direct examination beyond a showing of the fact that there had been an earlier marriage. Defendants sought on cross-examination to go beyond the scope of the direct examination and to go into the question of a sabbatical divorce between her and Munio, of the hotels most frequented in Paris by displaced persons, of how she arrived in Paris, of why her husband had changed his name and into other matters far beyond the scope of the direct exam-

ination. The court advised counsel that his questions were not within the scope of proper cross-examination but that if he wished to use the witness later as his own to prove the facts then sought to be elicited, he would have an opportunity to do so. To some of defendants' questions put to Ludmer the court sustained objections. Thus, one question was, "This is not the first time you have turned people into the authorities, is it?" At another point, he was asked whether he had discussed a certain letter from Mrs. Ludmer to Munio Knoll. He testified that he had no knowledge that the letter was sent, that he did not know it was going to be mailed and that, before it was sent, if it was sent, he had no conversation with his wife relative to sending it. What he and his wife may have said to each other, the court thought was wholly immaterial. In another instance, the court refused to allow counsel for defendants to ask Ludmer where his wife could be found, in the event they chose to subpoena her as a witness. All the matters to which defendants refer were clearly beyond the scope of the direct examination. We conclude that the action of the court was within the principles approved by this court in *United States v. Glasser*, 116 F. 2d 690 (CA-7) and *United States v. Hornstein*, 176 F. 2d 217 (CA-7).

We have examined defendants' objections to the charge to the jury and have read the charge in its entirety. It was thorough and complete, covering every phase of the case, impartially and freely. It demonstrated an earnest effort upon the part of the trial court to instruct the jury as to each possible defense suggested by the defendants. The language we have heretofore used in *United States v. Fleenor*, 162 F. 2d 935 (CA-7) and *United States v. Kaadt*, 171 F. 2d 600 (CA-7), is applicable.

Complaint is made that the court permitted evidence of events in America subsequent to the entries. When we remember that this case turned almost entirely upon the question of the validity of the Parisian marriages and that whether they were valid, in turn, depended upon the intent of the parties at the time the ceremonies occurred, it is clear that not only what was said and done prior to the time of the marriages, but that the conduct of the parties and their statements after they returned to America were relevant and competent for the jury to consider in determining whether in fact they reflected an intent to have performed valid marriages or whether they tended to show that the intent was merely to pretend to be married.

Defendants argue that this case illustrates a merger of a conspiracy with substantive offenses and that, therefore, a verdict of guilty of conspiracy can not be sustained. The rule that if two or more persons jointly commit a crime, they may not be convicted of a conspiracy to commit it, does not apply where parties other than the persons who commit the substantive offense have joined in a conspiracy to bring it about. Obviously, if more than one commit a crime, there may be others engaged in a conspiracy to have it committed who do not themselves take part in its commission. So here Treidler was not a party to any one of the invalid marriages or to the false statements made there after to the immigration authorities, which constituted the essential events comprising the substantive offenses, but, under the government's evidence, she participated in, if she did not actually originate, the scheme to have the substantive offenses committed. Moreover the conspiracy contemplated not only a course of conduct culminating in one illegal marriage but three. Each ceremony was between different parties, yet the conspiracy contemplated that the several actors should commit the several substantive offenses. Hence, we conclude there was no merger of the offenses and that the rule expressed in *Pinkerton v. United States*, 328 U. S. 640 applies. "It has long been and consistently recognized by the court that the commission of a substantive offense and a conspiracy to commit it are separate and distinct offenses. The power of Congress to separate the two and affix to each a different penalty is well established."

The judgment is affirmed.

And on the same day, to-wit, on the third day of January, 1952, the following further proceedings were had and entered of record, to-wit:

UNITED STATES COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

Thursday, January 3, 1952.

Before:

Hon. J. Earl Major, Chief Judge.

Hon. F. Ryan Duffy, Circuit Judge.

Hon. Walter C. Lindley, Circuit Judge.

The United States of America, <i>Plaintiff-Appellee,</i> 10326 <i>vs.</i> Marcel Max Lutwak, <i>Defendant-Appellant.</i>	} Appeal from the United States Dis- trict Court for the Northern District of Illinois, Eastern Division.
--	--

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, Affirmed.

UNITED STATES COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

Thursday, January 3, 1952.

Before:

Hon. J. Earl Major, Chief Judge.

Hon. F. Ryan Duffy, Circuit Judge.

Hon. Walter C. Lindley, Circuit Judge.

The United States of America;
Plaintiff-Appellee,

10327

*vs.*Munio Knoll,
Defendant-Appellant.} Appeal from the
United States Dis-
trict Court for the
Northern District
of Illinois, Eastern
Division.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, Affirmed.

UNITED STATES COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

Thursday, January 3, 1952.

Before:

Hon. J. Earl Major, Chief Judge.
Hon. F. Ryan Duffy, Circuit Judge.
Hon. Walter C. Lindley, Circuit Judge.

10328	The United States of America, <i>Plaintiff-Appellee,</i>	} Appeal from the United States Dis- trict Court for the Northern District of Illinois, Eastern Division.
	<i>vs.</i> Regina Teitler, <i>Defendant-Appellant.</i>	

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, Affirmed.

And afterwards, to-wit, on the eighteenth day of January, 1952, there was filed in the office of the Clerk of this Court a petition for rehearing which said petition for rehearing is not copied herein.

And afterwards, to-wit, on the twentieth day of February, 1952, there was filed in the office of the Clerk of this Court an answer to the petition for rehearing which said answer is not copied herein.

And afterwards, to-wit, on the sixteenth day of April, 1952, there was filed in the office of the Clerk of this Court the opinion of the Court on the Petition for Rehearing which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit.

October Term, 1951, January Session, 1952.

10326 The United States of America,
Plaintiff-Appellee,
vs.
Marcel Max Lutwak,
Defendant-Appellant.

10327 The United States of America,
Plaintiff-Appellee,
vs.
Munio Knoll,
Defendant-Appellant.

10328 The United States of America,
Plaintiff-Appellee,
vs.
Regina Treitler,
Defendant-Appellant.

Appeals from the
United States Dis-
trict Court for the
Northern District
of Illinois, Eastern
Division.

Upon petition for
Rehearing.

April 16, 1952.

Before MAJOR, Chief Judge, DUFFY and LINDLEY, Circuit Judges.

Per Curiam.

The statements contained in the last three lines of the second paragraph of appellant's petition for rehearing, beginning with the words "In ignoring * * *" and the footnote 1 on the same page, together with the general tenor of the petition, might well justify striking the entire document

for inexcusable impertinence and irrelevance. Clearly the matter mentioned in those two excerpts is in no way related to the facts or the law of this case. What the court may have done in matters involving other issues of fact and other principles of law, foreign to anything involved here, is no concern of appellants or their counsel. Presumably if the court has erred in some other case, counsel for the parties thereto will not fail to direct our attention to our miscomings.

However, rather than strike the petition, we prefer to indulge the belief that the matter, rather than being intentionally objectionable, was the result of the unrestrained ardor of a zealous advocate; instead of striking the petition, we direct the Clerk to delete therefrom the matter mentioned.

The petition for rehearing thus corrected really amounts to an unrestrained berating of the court for its failure to adopt defendants' theories advanced at the trial and in the argument in this court. It is in essence merely a reargument of everything previously presented. However, the argument that the alleged wives were incompetent is renewed with such vigor and is of such importance in the law of evidence that we have thought it advisable to enlarge upon what we said with respect to this issue. Accordingly the paragraph on page 8 of our opinion beginning "Defendants assert error * * *" and the paragraph following are stricken from the opinion and substituted therefor as a supplement to our decision is the following.

Maria Knoll, or Romankiewicz or Lutwak, originally married to Munio Knoll, and later, ostensibly, to Lutwak, testified for the government. Munio interposed no objection to her competency. Lutwak objected to her testimony as to what occurred after the second alleged marriage, *i. e.*, that to him, Lutwak, in August 1947. Grace Klemtner, allegedly married to Leopold, also testified. Leopold preserved an objection, but, inasmuch as he was acquitted, the question as to her privilege or competency as against him has become moot. She was unquestionably competent as to all other parties. Bess Osborne, who went through a marriage ceremony with Munio Knoll in Paris, was the other alleged spouse called to testify for the government. Munio objected upon the ground that she was his wife, though the record showed that he had previously married Maria. Other parties not related to her objected on the same ground. How-

ever, the privilege of the alleged husband does not extend to others.

Our real question then is: Did the court properly admit the testimony of Maria against Lutwak, and the testimony of Bess against Munio? There is no statute or Supreme Court decision declaring this testimony privileged or incompetent. Its legal status can best be understood from a somewhat detailed examination of authoritative decisions.

In *Funk v. United States*, 290 U. S. 371, the Supreme Court after reviewing certain earlier cases, held the wife of the defendant on trial for a criminal offense to be a competent witness in his behalf. Whether she could properly have been called to testify against him was not presented or decided. In the course of its decision, the court quoted from *Benson v. United States*, 146 U. S. 325: "the theory of the common law was to admit to the witness stand only those presumably honest, appreciating the sanctity of an oath, unaffected as a party by the result, and free from any of the temptations of interest. * * * Today the tendency is to enlarge the domain of competency and to submit to the jury for their consideration as to the credibility of the witness those matters which heretofore were ruled sufficient to justify his exclusion. This change has been wrought partially by legislation and partially by judicial construction. * * * steadily, one by one, the merely technical barriers which excluded witnesses from the stand have been removed, till now it is generally * * * true that no one is excluded therefrom unless the lips of the originally adverse party are closed by death, or unless some one of those peculiarly confidential relations, like that of husband and wife, forbids the breaking of silence."

The court also quoted from *Rosen v. United States*, 245 U. S. 467 as follows: "In the * * * which have elapsed since the decision of the *Benson* case, the disposition of courts and of legislative bodies to remove disabilities from witnesses has continued, as that decision shows it had been going forward before, under dominance of the conviction of our time that the truth is more likely to be arrived at by hearing the testimony of all persons of competent understanding who may seem to have knowledge of the facts involved in a case, leaving the credit and weight of such testimony to be determined by the jury or by the court, rather than by rejecting witnesses as incompetent. * * * Satisfied as we are that the legislation and the very great weight of judicial authority which have developed in sup-

port of this modern rule, * * * proceed upon sound principle, we conclude that the dead hand of the common-law rule of 1789 should no longer be applied to such cases as we have here."

The Supreme Court continued: "The rules of the common law which disqualified as witnesses persons having an interest, long since, in the main, have been abolished both in England and in this country; and what was once regarded as a sufficient ground for excluding the testimony of such persons altogether has come to be uniformly and more sensibly regarded as affecting the credit of the witness only. * * * Nor can the exclusion of the wife's testimony, in the face of the broad and liberal extension of the rules in respect of the competency of witnesses generally, be any longer justified, if it ever was justified, on any ground of public policy. It has been said that to admit such testimony is against public policy because it would endanger the harmony and confidence of marital relations, and, moreover, would subject the witness to the temptation to commit perjury. Modern legislation, in making either spouse competent to testify in behalf of the other in criminal cases, has definitely rejected these notions, and in the light of such legislation and of modern thought they seem to be altogether fanciful. The public policy of one generation may not, under changed conditions, be the public policy of another. *Patton v. United States*, 281 U. S. 276, 306.

"The fundamental basis upon which all rules of evidence must rest—if they are to rest upon reason—is their adaptation to the successful development of the truth. And since experience is of all teachers the most dependable, and since experience also is a continuous process, it follows that a rule of evidence at one time thought necessary to the ascertainment of truth should yield to the experience of a succeeding generation whenever that experience has clearly demonstrated the fallacy or unwisdom of the old rule.

"It may be said that the court should continue to enforce the old rule, however contrary to modern experience and thought, and however opposed, in principle, to the general current of legislation and of judicial opinion, it may have become, leaving to Congress the responsibility of changing it. Of course, Congress has that power; but if Congress fail to act, as it has failed in respect of the matter now under review, and the court be called upon to decide the question, is it not the duty of the court, if it possess the power, to decide it in accordance with present day standards

of wisdom and justice rather than in accordance with some outworn and antiquated rule of the past? That this court has the power to do so is necessarily implicit in the opinions delivered in deciding the *Benson* and *Rosen* cases. * * * The rule of the common law which denies the competency of one spouse to testify in behalf of the other in a criminal prosecution has not been modified by congressional legislation. * * * That this court and the other federal courts, in this situation and by right of their own powers, may decline to enforce the ancient rule of the common law under conditions as they now exist we think is not fairly open to doubt."

Following this decision, Rule 26 of the Federal Rules of Criminal Procedure was adopted, 18 U. S. C. 254, providing that "The admissibility of evidence and the competency and privileges of witnesses shall be governed, except when an act of Congress or these rules otherwise provide, by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience." It is clear that the language of the rule sprang from the decisions of the Supreme Court in the *Funk* case and in *Wolfe v. U. S.*, 291 U. S. 7, 12.

In 1935 there arose before the Court of Appeals for the 10th Circuit the question of the admissibility of the testimony of a wife against her husband in a criminal prosecution of the latter. The court said: "From the dawn of the common law until the middle of the nineteenth century, the accused could not testify in his own behalf because of his interest in the event of the trial. * * * The accused is now a competent witness in his own behalf in every state save possibly one.

"By similar statutes every state but one permits a wife or husband to testify when the other is accused, sometimes only in his behalf or with his or her consent. * * * Congress passed no statute removing the bar as to her, but as has been seen the ancient rule was abrogated by judicial decision. A wife is now competent to testify for her accused husband; the question still remains, May she testify against him? In this case, she was divorced when she testified, and there may well be a distinction on that ground. We prefer, however, to rest our decision on the underlying question, whether a wife is incompetent as a witness when called by the prosecution.

"The accused himself, by the federal constitution and the constitution or laws of the states, may not be compelled to testify upon his own trial. Should that immunity extend to

his wife? The enlightenment of the times which requires modification of common law principles may be found in the informed judgment of legislatures or the courts. *Funk v. United States*, supra. * * *

"These statutes, and the decisions of many courts which might be cited, indicate a clear and decided trend toward removing the bar of incompetency from witnesses as such; that we are moving steadily in the direction of allowing the trier of the facts to hear all the evidence, the interest or relationship of the witness to the parties being given due consideration in weighing its value. The trend is in the right direction." *Yoder v. United States*, 80 F. 2d 665.

In *United States v. Walker*, 176 F. 2d 564 c.d. 338 U. S. 891, Judge Learned Hand, writing for the majority, said: "In *Yoder v. United States* the Tenth Circuit declared that, like her incompetence to testify in her husband's behalf, a wife's incompetence to testify against him had become obsolete and should be abolished. * * * A few months later the Third Circuit held the contrary of this dictum, and the Sixth Circuit made the same ruling only a year ago. Thus, the question is still open in point of authority." He proceeded: "It is always a debatable question how far any relevant evidence should be privileged. It deprives the party against whom the privilege is invoked of access to the truth; and a disclosure of the whole truth should be the prime concern of a court of justice. Whether in a given situation the interest of the privileged party in suppressing the truth, ought to outweigh that concern would seem to be a matter for Congress, and not for the courts. * * * We conclude therefore that we should await the choice of Congress between the conflicting interests involved, or such an overwhelming general acceptance by the states of abolition of the privilege, as induced the Supreme Court to action in *Funk v. United States*, supra."

Judge Clark, dissented; saying: "Admittedly the common-law principle that 'a wife cannot be produced either for or against her husband, * * *' is gone; indeed, there is none now so poor as to do it reverence. But I think we tend to overlook the fact that our duty to interpret 'the principles of the common law' in the light of 'reason and experience,' Federal Rules of Criminal Procedure, rule 26, compels us to discover anew a rational rule, and that a rule looking at least halfway toward the past is itself a new embodiment of the law without, however, the gain of being a real adjustment to modern life. In this instance, there-

fore, I prefer the forthright approach of a great American judge, McDermott, J., speaking for a unanimous court in *Yoder v. United States*, 10 Cir., 80 F. 2d 665, and placing his decision by preference on this very point."

"I think that the judge's ruling below, made after careful hearing and argument, faced modern realities in the spirit invoked in *Funk v. United States*, 290 U. S. 371, 54 S. Ct. 212, 78 L. Ed. 369, 93 A. L. R. 1136, and now embodied as a mandate in F. R. Cr. P. 26." He added this footnote: "Approved by those courts of last resort, the law reviews: 24 Calif. L. Rev. 472; 4 Duke B. A. J. 107; 35 Mich. L. Rev. 329; 20 Minn. L. Rev. 693; 10 So. Calif. L. Rev. 94. See also Hutchins & Slesinger, Some Reflections on the Law of Evidence; Family Relations, 13 Minn. L. Rev. 675."

In *Shores v. United States*, 174 F. 2d 838 (CA-8), concerning various decisions, the court said: "All these accordant decisions were precedent of the emancipating declaration made by the Supreme Court in 1933, in *Funk v. United States*, 290 U. S. 371, 54 S. Ct. 212, 78 L. Ed. 363, 93 A. L. R. 1136, that the federal courts were not to regard themselves as being fettered by the limitations of the criminal evidence rules of the common law as they might have existed at some particular time; that in the initial adoption of common law rules for the federal judicial system there equally was intended to be an adoption of those principles of extension and growth which always had been regarded as being inherent in the common law system and which in fact constituted the genius of that system; * * * that the courts at all times, in the application of any rule of evidence, should give heed to the general currents of legal thought, judicial opinion, and legislative action in the particular field; and that they should continuously 'declare and effectuate, upon common-law principles, what is the present rule upon a given subject in the light of fundamentally altered conditions' and on the basis of 'present day standards of wisdom and justice.' 290 U. S. at pages 383 and 384, 54 S. Ct. at page 216, 78 L. Ed. 363, 93 A. L. R. 1136."

"Mr. Justice (later Chief Justice) Stone restated the doctrine of the *Funk* case in *Wolfe v. United States*, 291 U. S. 7, 12, 54 S. Ct. 279, 78 L. Ed. 617, decided at the same term, in the terse language, that rules of criminal evidence should be 'governed by common-law principles as interpreted and applied by the federal courts in the light of reason and experience.' This language was incorporated into Rule 26 of the subsequently promulgated Federal Rules

of Criminal Procedure, 18 U. S. C. * * * The Notes of the Advisory Committee added the following: 'This rule contemplates the development of a uniform body of rules of evidence to be applicable in trials of criminal cases in Federal courts. * * * The rule does not fetter the applicable law of evidence to that originally existed at common law. It is contemplated that the law may be modified and adjusted from time to time by judicial decisions.'

"Since the liberating mandate of the *Funk* case, all the decisions in which the question here involved has arisen have held that under present-day concept of the common law exception to the incompetency of a wife's testimony against her husband, his transportation of her in interstate commerce for the purpose of having her engage in prostitution is such a personal wrong against her as to make her testimony admissible in a prosecution of him under the Mann Act. See *United States v. Mitchell*, 2 Cir., 137 F. 2d 1006, reaffirmed 138 F. 2d 831, certiorari denied 321 U. S. 794, 64 S. Ct. 785, 88 L. Ed. 108, rehearing denied 322 U. S. 768, 64 S. Ct. 1052, 88 L. Ed. 1594; *United States v. Williams*, D. C. Minn., 55 F. Supp. 375; *Levine v. United States*, 5 Cir., 163 F. 2d 992; *Hayes v. United States*, 10 Cir., 168 F. 2d 996. Cf. also *Wilhoit v. Hiatt*, D. C. Pa. 60 F. Supp. 664.

"*Yoder v. United States*, 10 Cir., 80 F. 2d 665, undertook to go even further and to declare generally that a wife's testimony may be received against her husband in a criminal case of any nature, subject only to the incompetency of any communications made within the field of marital privilege, where that privilege is asserted. *Thouvenell v. Zerbst*, 10 Cir., 83 F. 2d 1003, approved and repeated this broad view.

* * * The American Law Institute's Model Code of Evidence, however, like the *Yoder* case, permits a privilege to be claimed against a wife's testimony only as to confidential communications of the marital relationship. * * * The right under the common law rule, of an accused not to have his spouse testify against him, and the equal right of such spouse to refuse to do so were privileges created by and having their existence only within the scope of the rule itself. * * * The public policy involved, under which it was deemed of more importance to leave the wife's testimony available in the class of offenses encompassed by the exception, than to cloak it with the privilege of the rule, necessarily had as its underlying basis the interest of society generally, and not simply that of the wife individually,

In *United States v. Graham*, 87 F. Supp. 237, defendant was indicted for having transported into the state \$5,000 in money theretofore stolen or taken feloniously by fraud in violation of Section 415, now 2314 Title 18 U. S. C. In prosecuting him, the government called his wife to testify, that the money had been stolen from her. The defendant urged that she was incompetent. The court, after thorough examination of the historical background of the common law and the statutory law affecting women and women's rights and their position as witnesses, made various pertinent comments. Thus it said at 239: "The adoption of the Federal Rules of Criminal Procedure marked an important step in a lengthy struggle to improve the administration of criminal justice through judicial rule making. * * * By statute many of the states have gradually abolished restrictions as to the competency of spouses to testify against each other. See Wigmore on Evidence, 3rd Ed., Sec. 488. Many of these statutes are lacking in uniformity and it is difficult to state any general rule with respect to them. * * *

"It is agreed by some legal writers that the rule prohibiting husband and wife from testifying against each other has long outlived its usefulness and that in the interests of justice, the court should be permitted to hear all of the evidence. Wigmore states it thus: 'This privilege has no longer any good reason for retention. In an age which has so far rationalized, depolarized and de-chivalrized the marital relation and the spirit of Femininity as to be willing to enact complete legal and political equality and independence of men and women, this marital privilege is the merest anachronism, in legal theory, and an indefensible obstruction to truth, in practice.' 3rd Ed., Vol. 8, Sec. 2228, p. 232."

We have quoted at length from the decisions, in the hope of demonstrating that in a case such as this, the rules of evidence, as defined in Rule 26, have shown an increasing tendency toward abolishment of incompetency in favor of admissibility, leaving the interest of the witness to the trier of the facts as bearing upon credibility. In other words, under the modern trend of thought in this country, the spouse, instead of being incompetent, is to be admitted as an interested witness, whose credibility is for the jury. This conclusion, we think, is the only one consistent with the reasoning of the Supreme Court in the decisions quoted and that of other courts. We conclude that, in view of the fact

that Rule 26 of the Federal Rules of Criminal Procedure provides that the admissibility of evidence and the competence and privileges of witnesses shall be governed, in the absence of an act of Congress, by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience, and in view of the reasoning of the Supreme Court and other courts, we are justified in holding that, irrespective of all other questions, the wives were competent witnesses.

If we be wrong in this conclusion, then we think that, for another reason, the condition of the record here was such that the court was justified in permitting them to testify. A substantial part of the government's case had been submitted before any question of competency arose. The court obviously believed that a prima facie case of invalidity of the marriages had been presented. In such a situation it seems to us only reasonable that the court should conclude, that, in view of the prima facie case of invalidity, the jury should hear what the wives had to say and make the final determination of fact. This rule we think is in accord with authoritative decisions.

Thus in *Hoch v. The People of the State of Illinois*, 219 Ill. 265, the court held: In determining the competency of an alleged wife as a witness the court must act upon the evidence as presented at the time of the ruling, and if there is evidence establishing a former marriage of the accused and that the first wife is still living and undivorced it is not error to permit the wife of the bigamous marriage to testify, but all questions of fact as to either marriage must be left to the ultimate determination of the jury, under proper instructions. In *Clark, alias French v. The People*, 178 Ill. 37 at 38, the court held that: The law is that where parties enter into a marriage contract and one of them has at the time a living spouse from whom he or she has not been legally divorced, the marriage is, as to the other, absolutely void. (*Cartwright v. McGown*, 121 Ill. 388.) Where the supposed marriage is void the alleged husband and wife are competent witnesses for or against each other, even though they believe themselves to be lawfully married. The admission of evidence should as far as possible lie in the discretion of the trial judge. *Klein v. United States*, 176 F. 2d 184 (CA-8), c. d. 338 U. S. 870; *United States v. Riccardi*, 174 F. 2d 883 (CA-3), c. d. 337 U. S. 941; *United States v. Gottfried, et al.*, 165 F. 2d 360 (CA-2), c. d. 333 U. S. 860; *Oliver v. U. S.*, 267 F. 544 (CA-4).

It is difficult to follow defendants' reasoning as to alleged validity of the marriages under French law. Under Illinois law, and quite generally in this country, a sham marriage, one in jest, or one intended to be only a pretense is void. In the absence of proof to the contrary, the marriage laws of another state or country are presumed to be the same as the laws obtaining in the forum, there is no presumption that the marriage laws of another state or country are different from the laws obtaining in the forum. *Lincoln v. Riley*, 217 Ill. App. 571; *Finer v. Steuer*, 152 N. E. 220, 255 Mass. 611; *Juilliard & Co. v. May*, 130 Ill. 87 at 97; *Nehring v. Nehring*, 164 Ill. App. 527 at 530. Thus it was held that the laws of the Argentine Republic relating to the purchase of a draft are presumably in accord with the law merchant as recognized in New York. *Scura v. National City Bank of New York*, 177 N. Y. S. 75, 107 Misc. 93. There is no presumption that the law of foreign countries is unlike ours. *The Fort Gaines*, D. C. Md., 18 F. 2d 413, 414; *The Hoxie*, C. C. A. Md., 297 F. 189, 190 (CA-4), affirming D. C. 291 F. 599; certiorari denied; *American Exp. Co. v. U. S.*, 45 S. Ct. 91, 266 U. S. 608, 69 L. Ed. 465; *Royal League v. Kavanagh*, 233 Ill. 175.

If the French law differs from that of Illinois and the United States, it was defendants' duty to show that fact and thus rebut the presumption that it was the same. In *Pierce, Admr. et al. v. Pierce*, 379 Ill. 185 at 191, the court said: "The general rule of conflict of laws is that the marital status is governed by the law of the State of domicile. *Longhran v. Longhran*, 292 U. S. 216, 54 Sup. Ct. 684; *People v. Shaw*, 239 Ill. 544; 35 Am. Jr. (Marriage) 286, par. 170." In the absence of rebuttal evidence to the contrary then, the marriages were void under the French law.

The petition for rehearing is denied.

And on the same day, to-wit, on the sixteenth day of April, 1952, the following further proceedings were had and entered of record, to-wit:

UNITED STATES COURT OF APPEALS
For the Seventh Circuit,
Chicago 19, Illinois.

Wednesday, April 16, 1952.

Before:

Hon. J. Earl Major, Chief Judge.
Hon. F. Ryan Duffy, Circuit Judge.
Hon. Walter C. Lindley, Circuit Judge.

10326 The United States of America,
Plaintiff-Appellee,
vs.
Marcel Max Lutwak,
Defendant-Appellant.

10327 The United States of America,
Plaintiff-Appellee,
vs.
Munio Knoll,
Defendant-Appellant.

10328 The United States of America,
Plaintiff-Appellee,
vs.
Regina Treitler,
Defendant-Appellant.

Appeals from the
United States Dis-
trict Court for the
Northern District
of Illinois, East-
ern Division.

It is ordered by the Court that the petition for a rehearing of this cause be, and the same is hereby, Denied.

It is further ordered that the Clerk of this Court be directed to delete from the Petition for Rehearing filed by Defendants-Appellants the matter contained in the last three lines of the second paragraph beginning with the words "In ignoring * * *" and the footnote 1 on the same page.

And, afterwards, to-wit, on the twenty-second day of April, 1952, the mandates of this Court issued to the United States District Court for the Northern District of Illinois, Eastern Division.

And afterwards, to-wit, on the twenty-third day of April, 1952, the following further proceedings were had and entered of record, to-wit:

UNITED STATES COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

Wednesday, April 23, 1952.

Before:

Hon. J. Earl Major, Chief Judge.

The United States of America,
10326 *Plaintiff-Appellee,*
vs.

Marcel Max Lutwak,
Defendant-Appellant.

The United States of America,
10327 *Plaintiff-Appellee,*
vs.

Munio Knoll,
Defendant-Appellant.

The United States of America,
10328 *Plaintiff-Appellee,*
vs.

Regina Treitler,
Defendant-Appellant.

Appeals from the
United States Dis-
trict Court for the
Northern District
of Illinois, East-
ern Division.

On motion of counsel for Defendants-Appellants, not objected to by counsel for Plaintiff-Appellee, it is ordered that the mandate of this Court heretofore issued to the United States District Court for the Northern District of Illinois, Eastern Division on April 22, 1952 be, and the same is hereby, Recalled and Stayed until May 16, 1952, subject to the provisions of Rule 25 of the Rules of this Court.

It is further ordered that the order heretofore entered on April 22, 1952, directing Defendants-Appellants to surrender, be vacated and set aside and that the said Defendants-Appellants' bail bonds posted with this Court be continued in force upon the same terms and conditions as were heretofore in effect.

And afterwards, to-wit, on the twenty-ninth day of April, 1952, there was filed in the office of the Clerk of this Court a designation of record, which designation of record is in the words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit.

The United States of America, <i>Plaintiff-Appellee,</i> <i>vs.</i> Marcel Max Lutwak, <i>Defendant-Appellant.</i>	}	No. 10,326.
--	---	-------------

The United States of America, <i>Plaintiff-Appellee,</i> <i>vs.</i> Munio Knoll, <i>Defendant-Appellant.</i>	}	No. 10,327.
--	---	-------------

The United States of America, <i>Plaintiff-Appellee,</i> <i>vs.</i> Regina Treitler, <i>Defendant-Appellant.</i>	}	No. 10,328.
--	---	-------------

NOTICE.

To: Otto Kerner, Jr., United States Attorney, United States Court House, Chicago, Illinois.

You Are Hereby Notified that we shall, on Tuesday, April 29, file with the Clerk of the above court, the Amended Designation of Record of Defendants-Appellants, to be filed in the Supreme Court of the United States, copies of which Designation of Record are hereby served upon you.

A. Bradley Eben,
Richard F. Watt,
Bernard Weissbourd.

Received a copy of the above Notice, together with a copy of the Designation of Record therein referred to, this _____ day of April, 1952.

Otto Kerner, Jr.,
United States Attorney.

Endorsed: Filed Apr. 29, 1952. Kenneth J. Carrick,
Clerk.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit.

The United States of America,
Plaintiff-Appellee,
vs.
Marcel Max Lutwak,
Defendant-Appellant. } No. 10,326.

The United States of America,
Plaintiff-Appellee,
vs.
Munio Knoll,
Defendant-Appellant. } No. 10,327.

The United States of America,
Plaintiff-Appellee,
vs.
Regina Treitler,
Defendant-Appellant. } No. 10,328.

DESIGNATION OF RECORD.

To the Clerk of the United States Court of Appeals for the Seventh Circuit:

The Clerk will please prepare a Certified Transcript of Record in these causes for filing in the Supreme Court of the United States to consist of the following:

1. The entire printed record in this Court of Appeals.
2. Order taking this cause under advisement entered December 5, 1951.
3. Opinion of this Court, filed January 3, 1952.
4. The judgment entered January 3, 1952.
5. Reference to filing of petition for rehearing.
6. Reference to filing of answer to petition for rehearing.
7. Supplemental Opinion of this Court filed April 16, 1952.
8. Order denying petition for rehearing entered April 16, 1952.

9. Order of this Court recalling and staying mandate, entered April 23, 1952.

10. This Amended Designation of Record, Notice of Filing thereof and Proof of Service in connection therewith.

11. Clerk's Certificate.

By A. Bradley Ehen,
208 South LaSalle Street.

Richard F. Watt,
1943—141 W. Jackson Blvd.

Bernard Weissbourd,
2025—135 S. LaSalle Street.

Endorsed: Filed April 29, 1952. Kenneth J. Carrick,
Clerk.

UNITED STATES COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

I, Kenneth J. Carrick, Clerk of the United States Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the papers filed and the proceedings had, made in accordance with the designation of record, filed April 29, 1952, in:

Cause No. 10326.

The United States of America,

Plaintiff-Appellee,

vs.

Marcel Max Lutwak,

Defendant-Appellant.

Cause No. 10327.

The United States of America,

Plaintiff-Appellee;

vs.

Munio Knoll,

Defendant-Appellant.

Cause No. 10328.

The United States of America,

Plaintiff-Appellee,

vs.

Regina Treitler,

Defendant-Appellant,

as the same remains upon the files and records of the United States Court of Appeals for the Seventh Circuit:

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Court of Appeals for the Seventh Circuit, at the City of Chicago, this 2nd day of May, A. D. 1952.

(Seal)

Kenneth J. Carrick,
*Clerk of the United States Court of
Appeals for the Seventh Circuit.*

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1952

No. 66

MARCEL MAX LUTWAK, MUNIO KNOLL, and REGINA TREITLER,
Petitioners,

vs.

THE UNITED STATES OF AMERICA

ORDER ALLOWING CERTIORARI—Filed October 13, 1952

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(4493)